No. 189.
Brief of Edmunds & Bond for Appt.
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JAMES H. MCKENNEY
Clerk
Supreme Court of the United States.
Filed Jan. 5, 1893.

October Term, 1892. No. 189.

HENRY M. BAKER, Appellant,

vs.

HORACE S. CUMMINGS.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF ON THE PART OF THE APPELLANT.

GEORGE F. EDMUNDS,
S. R. BOND,
Of Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES.

Henry M. Baker, Appellant,

vs.

Horace S. Cummings.

October Term, 1897.
No. 189.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF ON THE PART OF THE APPELLANT.

STATEMENT.

The bill in this case was filed on the 1st of February, 1890.

It is alleged that both parties had been for more than fifteen years attorneys at law and engaged in the general practice of their profession in the various courts of the District of Columbia and of the United States, as well as before the executive and legislative branches of the Goverment. It alleged that on or about the 1st of January, 1876, the parties entered into a partnership by parole to prosecute the practice of law at Washington; that "they were thereafter, and until either party should desire to end the partnership relation, jointly to prosecute their profession as attorneys at law as equal partners, each to share equally in all the profits or losses of their joint business." It alleged that the partnership continued until the first of September, 1889, when it was dissolved (Record, pages 1, 2). It alleged that among the items of business of the concern were cases known as

"inspector cases," in which a contract was obtained from claimant for the prosecution of his claim upon a contingent fee usually of twenty-five per cent. It described the method of prosecution, &c. It alleged that the parties, for convenience, devoted themselves to separate parts of their various business, and that accordingly Baker took main charge of the inspector cases. That Cummings had only a general knowledge of the business in the inspector cases, and that nearly all the papers and memoranda relating thereto were in the manual possession of Baker. That down to the 1st of September, 1886, many of said cases had been prosecuted to success, and the money received for the most part by Baker and properly divided (Record, page 2). It alleged that on or before the 1st of September, 1886, many of said cases had been presented and allowed, and appropriations made by Congress therefor; and that Baker was then engaged in collecting the amounts due (Record, page 2). It alleged that Baker "particularly" knew what of said cases had been appropriated for, and also knew that Cummings did not know what the amount of such allowance for said cases was (Record, pages 2, 3). It alleged that beside the cases so appropriated for, there were other such cases in the office as to which no appropriation had been made by Congress, but which were still pending and awaiting allowance; and that there were many other cases that the firm had taken measures to secure and which were afterwards secured by Baker. It alleged that in these respects Baker alone had full and complete knowledge, &c. It alleged that on or about the 6th of September, 1886, Baker requested Cummings to sell to him, for the sum of $15,000, Cummings' interest in the fees earned in the cases appropriated for and in cases where contracts had been obtained and in cases that might thereafter be secured (Record, page 3). It alleged that thereupon "various conversations were had on divers occasions" in respect of the matter, and that at one of the conversations Baker

handed to Cummings "a bundle of papers, which he said contained information upon which the complainant could ascertain the value of said interest" (Record, page 3). It alleged that upon examination of the papers, Cummings was unable to gather therefrom any adequate information without the aid and explanation of Baker, and thereupon he requested Baker to inform him as to the amount due the firm on account of fees earned in these cases and which had been already appropriated for, and also the amount of claims not yet appropriated for (Record, page 3). It alleged that Baker replied that the amount of fees earned and payment of which was already provided for by Congress was but the sum of $20,000, and that the amount of all other claims in said cases not then appropriated for would be about $80,000, and that the expected fee from these would amount to about $20,000 (Record, page 3). It alleged that Cummings relied on these statements and returned the papers relating thereto which had been put into his possession, and said to Baker that he would be willing to accept Baker's offer and to assign, and to receive for his interest in the fees in all of said cases, $10,000 for the cases already allowed, and $5,000 for those not yet allowed; and that he did it solely on the representations of Baker (Record, pages 3, 4). It alleged that thereupon a written assignment was accordingly made, and that Cummings received Baker's check for $15,000 therefor (Record, page 4). It alleged that at the time of Cummings' inquiry as to the amount of claims allowed, &c., instead of there being but $20,000 of fees earned in the cases appropriated for, the sum allowed and chiefly collected was more than $32,000 (Record, page 4). It alleged that very much more than $80,000 of prospective claims and chances existed, but admits that Baker did not know the full extent of these prospective chances; but believes that Baker knew they were very much more than $80,000 (Record, page 4). It alleged that Cummings' "suspicions were aroused soon after executing said assignment as to whether said defendant

had dealt with him fairly in the matter of said inspector cases." It alleged that "it was not until about the 1st of August, 1889," that Cummings ascertained that Baker had "misrepresented the amount of fees earned and to be earned," and that he thereupon demanded restitution (Record, page 5). It alleged that on the 19th of December, 1889, Baker sued Cummings for a balance of $2,000 and more, with a bill of particulars growing out of an account stated in respect of their partnership transactions (Record, page 5). It alleged that this suit at law was not then at issue, and that Cummings could not plead all his defenses in the suit at law, and that "especially as the right of the complainant to have discovery in the premises and to have the said assignment canceled and held for naught" was the basis of his bill (Record, page 5). The bill waived answer under oath, but required a particular answer to two interrogatories confined to mere statistical sums (Record, page 6). The bill prayed that the assignment be declared null and void, and that an account be had (Record, page 6). The bill was sworn to (Record, page 6).

THE ANSWER OF BAKER alleged:—

1. That he declined to avail himself of the privilege of not answering under oath (Record, page 7). It then answered the several paragraphs of the bill *seriatim*. It denied that Cummings was a member of the bar of any of the courts of the District of Columbia, or of the Supreme Court of the United States, except the Court of Claims; and alleged that Cummings had never even made a motion in the Court of Claims or argued a cause there in open court (Record, page 7). It denied that the partnership was formed in 1876, as alleged in the bill, and asserted that it was formed about the 1st of July, 1874 (Record, page 7). It alleged that by the partnership agreement in parole each was to devote his

whole time, &c., to the practice of law in Government cases on equal shares, except that Cummings was to have all the fees in cases he then had on hand (Record, page 8). It alleged that there was no change in these partnership relations until September, 1886 (Record, page 8). It denied that Cummings had, as alleged in the bill, fully performed his obligations as a partner, but that on the contrary he had been for several years named neglectful, and more and more neglectful of the interests of the partnership business; and that Baker complained of this and proposed a dissolution, but that Cummings objected to dissolution and promised to attend more closely to the business. It alleged that he did not do it, except on occasion, and in one particular instance Baker urged Cummings be admitted to practice in the Court of Alabama Claims, and urged him to attempt to get cases therein which would have yielded $25,000 in fees; that Cummings did not do so, but that all the cases they had in that court were argued by Baker, and that Baker did by very far the largest part of the work. It alleged that there were many other instances of a similar character (Record, pages 8, 9). It alleged that owing to this state of circumstances and conduct, Cummings did not, during the last five years and more of the partnership relation, secure to the firm from his services fees to a greater amount than about $5,800, and that that sum Cummings had not divided with Baker, and that it was upon this account that Baker's suit at law had been commenced (Record, page 9). It alleged that Cummings became the assignee of H. D. Cooke & Co. in 1884, on his own motion, and without consulting the complainant (Record, page 9). That thereupon Baker proposed that they dissolve; that Cummings replied that he did not think the matter would take much of his time, and that he would divide his assignee fees as those secured in their practice; that Baker was not satisfied, but, on the earnest entreaty of Cummings, consented to go on for the time (Record, page 9). It alleged, from that time until the dissolution of the partnership in

1889, that Cummings did very little in the joint business, and that so little was done that in the early part of 1886 Baker informed Cummings that he wished to terminate the partnership, and proposed that they settle to that date all receipts and expenses, and that each take as his own all unfinished business arising after January, 1885, and divide all the fees of any business before that time (Record, pages 9, 10). It alleged that Cummings did not consent to this, but proposed to divide the business as of the 1st of January, 1886, if they must dissolve; or that, in consideration of the greater services rendered by Baker, if Baker "would continue with the complainant he would consent to take one-third instead of one-half of the fees collected in the class of cases called inspector cases" (Record, page 10). It alleged that at this stage of the matter Baker offered to buy all of Cummings' interest in the inspector cases, and to pay $14,000 therefor (Record, page 10). It alleged that finally, after full investigation, they closed their relations in respect of the inspector cases, by Baker's paying Cummings $15,000, and giving up all his right to a share in the fees of the Cooke & Co. assignment (Record, page 10). It absolutely denied all the allegations in the sixth paragraph of the bill, and alleged that the inspector cases involved many distinct questions of law and many distinct questions of fact; that Baker did the principal work in the whole of them; that he frequently asked Cummings to assist about them, but that Cummings did not do so to any extent (Record, pages 10, 11). It alleged that Cummings had at all times "full and free access to and use of all the agreements, books, papers, records, and all other memoranda which pertained to or in any manner had any connection" with inspector cases. It alleged that on the occasion of their negotiations respecting the matter, Baker gathered together all the books and papers then in existence relating to the matters, and the Treasury Department registers, and handed them to Cummings for examination and inspection, with the statement that he (Baker) would

explain anything and everything which Cummings might ask about, and that the public documents of which both had complete knowledge would show the whole situation (Record, page 11). It alleged that Cummings took these books and papers, well knowing the appropriation that had been made in respect of them (Record, page 11). It alleged that these books, papers, and documents were everything (except the statutes of the United States) which Baker had used in the inspector cases, and that they were full and ample to enable Cummings to become completely informed of every aspect of the cases (Record, page 11). It alleged that Cummings took these books, papers, and documents away from the office that they jointly occupied, and retained them in his possession for more than two weeks (Record, page 11). It alleged that Baker answered every question asked him by Cummings fully and truly in every respect (Record, page 12). It alleged that at that time Cummings had offered to take one-third instead of one-half the fees in the inspector cases, and that upon that basis the sale of Cummings' interest in these cases was made (Record, page 12). It alleged that on this occasion Cummings said he had been considering the matter, and, if Baker thought it best for him, he would sell out that interest for $15,000; that Baker refused to advise him about what was for his own interest, but offered to give him any information he desired, and said that $15,000 was more than he ought to pay, but that, to end the matter, he would give it, if Cummings wished; that Cummings said he would take it, and thereupon the transaction was closed, Baker giving up all his rights to a share in the emoluments of the Cooke assignment (Record, page 12). It alleged that Cummings had every means in his possession of knowing with absolute precision the amount of fees then earned (Record, pages 12, 13). It denied positively that Cummings ever asked Baker the amount of fees then already earned, and denies positively that he stated to Cummings that the amount of fees then earned amounted to only about the sum of $20,000 (Rec-

ord, page 13). It alleged that he informed Cummings in respect of the cases appearing in the House executive documents, and which of them were those in which they were concerned, and gave him every information asked for about them (Record, page 13). It denied positively the allegation of the bill that Baker represented the cases unappropriated for and within reach as amounting to only about $80,000; and that Baker himself had made no computation relating thereto (Record, page 13). It absolutely denied the allegations in the seventh paragraph of the bill respecting Baker's alleged representations of the amount appropriated for, and all outstanding possibilities, &c. (Record, page 13). It denied every allegation in the eighth paragraph of the bill (Record, page 14). As to the ninth paragraph of the bill, defendant denied every imputation of wrong-doing, or the withholding of any information, and stated that Cummings was furnished with all the documents and papers in existence at that time in respect of the cases; and that Cummings had them in his own separate possession for two weeks or more before they concluded the transaction; and alleged that he believed that Cummings understood the whole situation perfectly. It alleged that immediately after the conclusion of the trade, Baker left Washington for some weeks, and that Cummings took charge of what then became Baker's business about the inspectors' claims, and attended to the payment of the clients of the sums that were being received for their account; and to that end Baker left with Cummings a large number of blank checks, signed, drawn to Cummings' order, in order that the clients might be promptly remitted to; that Cummings during that absence canceled the $15,000 check given on the sale of Cummings' interest, and used three of such checks from the 7th to the 29th of September for the purpose of getting his $15,000 (Record, page 14). It alleged that Baker left with Cummings "six sheets of schedules, on which were entered the names of all the clients entitled to payment from the appropriation, and which were included

in the aforesaid House executive documents Nos. 70 and 225," and which were the cases referred to by Cummings in his bill as having been appropriated for (Record, page 14). It alleged that those schedules contained an accurate statement of the amount allowed to each of said clients, the amount of fees due from each, and the amount to which each client was entitled after the deduction of the fee; and also a sheet No. 7, which showed remittances made and to be made to associate attorneys (Record, pages 14, 15). It alleged that Cummings, " while thus acting for defendant in the matter, made collections and remittances, as is shown by complainant's own handwriting on said schedule, on the 9th and 29th of September, 1886, and on days intervening between those dates." It alleged that during all that time Baker was absent from Washington, and that Cummings " had during all of that time the sole possession and custody of said schedules which showed the entire fees resulting from said cases, then appropriated for and payable, as aforesaid " (Record, page 15). It alleged that on Baker's return to Washington, Cummings returned to him the schedules and the defendant's bank book, unused checks, &c., without expressing in any manner any dissatisfaction with the trade they had made (Record, page 15). It alleged that afterwards, and while the partnership continued, their joint business went on, one and the other collecting fees, &c., and that Baker tried to secure an adjustment and settlement thereof without success (Record, page 15). It alleged that they thus went on until the 1st of August, 1889, when Baker insisted that they must have a settlement and a dissolution (Record, page 15). It alleged that that was the first time that Cummings expressed to Baker any dissatisfaction with the sale of September, 1886 (Record, page 15). It alleged that then, for the first time, Cummings showed the defendant a paper, dated September 7th, 1886, the next day after the sale of Cummings' interest in the inspector cases, entitled " Thoughts in mind for the last few days " (Record, page 15).

It alleged that Baker, having heard the paper read, denounced Cummings for having had such a paper for three years and during all the time occupying the same office, and not communicating its contents or the ideas it implied to Baker (Record, page 15). It alleged that Baker wrote a reply to said paper, which he wishes to have produced at the hearing (Record, page 16). It alleged that Baker's suit against Cummings was based upon an account stated between the parties, and that several items therein were personal and not partnership; and that some of the entries in said account stated were in the handwriting of Cummings, and written by him at the time of stating the account (Record, page 16). The answer also insisting upon laches and upon the Statute of Limitations (Record, page 17).

The answer was traversed, and testimony taken consisting, in all essential parts, of the sole testimony of the two parties.

This testimony, as given by both parties, showed that both parties agreed—

I. That they were joint and equal partners in prosecuting Government claims, &c., beginning in 1874 instead of 1876, as Cummings swore in his bill.

II. It showed that Baker did by far the largest share of the work and gained by far the largest part of the fees of the joint concern.

III. It showed, as testified by both parties, that Baker was anxious to dissolve the partnership for these reasons.

IV. It showed, as testified by both parties, that on the occasion of the sale in 1886, when Baker insisted upon dissolving, Cummings was willing and desirous to continue the partnership on the basis of his receiving one-third of the fees, as well those already earned as those which might afterwards be secured, for the obvious reason that Baker furnished

the chief resources of the partnership, and Cummings therefore did not wish to dissolve it.

V. It showed, by the testimony of both parties, that on September 6th, 1886, all the papers and documents then in existence relating to their affairs in respect of the inspector cases were put into the personal possession of Cummings, and that he had them for a considerable length of time, for the purpose of study and inspection, with a view to the proposed sale of his interest.

VI. It showed that the very next day after the sale was made, and for three weeks thereafter, during Baker's absence, Cummings had in his possession and worked upon the very schedule that showed in and of itself the whole number and amount of the cases that had been appropriated for and the sums due to each of the clients, and the fees to be retained in respect thereof; and that he made entries in this schedule and drew checks of Baker, from the signed blanks left with him, accordingly.

VII. It showed, from the testimony of both parties, that while the partnership continued, with both parties in the same office and room, Cummings never made any complaint in respect of the transaction for nearly three years, and never until Baker insisted upon the final dissolution of the firm.

VIII. It showed, from the testimony of both parties, that Baker declined to give Cummings any advice or suggestion in respect of what was for Cummings' interest in respect of the transaction; but that Baker distinctly informed Cummings that, with all these papers and information, he must judge for himself what he would think it best to do, but that Baker would explain any matter Cummings wished.

So far, the testimony of both parties substantially agrees.

In respect of the allegation in the bill that Baker represented the fees earned to have been only about $20,000, and the amount of cases in which fees might possibly be thereafter earned, the answer positively denies that any such representation, or any representation of that nature, was ever made; and the testimony of Mr. Baker is equally positive in the denial.

There is no proof of any kind tending to support the statement of Cummings on this point, but the surrounding circumstances wholly rebut it, for the very next day after the conclusion of the transaction in which Cummings alleges these representations were made, the schedule before mentioned, which showed that the fees then earned (if they could all be gotten) amounted to a little more than $31,000, was and continued to be in Cummings' possession and use. This schedule, as appears from the testimony of Baker, was not in existence at the time the papers and documents relating to the subject were taken from the office by Cummings for examination, two or three weeks before; but every fact appearing in the schedule appeared in the papers and documents Cummings had taken; and the schedule was only a sheet made up in a condensed form showing the clients entitled under the appropriation which had then been made, the sums to which they were entitled, and the fee to be deducted, &c.—made up obviously for immediate convenience for the prompt transmission of the sums to be sent to clients when their powers of attorney to receive payment should have been received, and the money obtained from the Treasury.

ASSIGNMENT OF ERRORS.

The court below erred—

1. In not dismissing the bill for want of equity.

2. In finding, by implication or otherwise, that Baker made any untrue statements to Cummings.

3. In finding, by implication or otherwise, that Baker concealed or withheld any material fact or circumstance connected with the transaction from Cummings.

4. In decreeing any relief whatever to Cummings.

5. In not holding that the case was governed by the Statute of Limitations, or the analogy to that statute followed by courts of equity.

6. In not holding that the laches of Cummings were fatal to the maintenance of the suit.

POINTS.

I. The evidence altogether failed to establish any misrepresentation on the part of Baker. It is true Cummings says Baker told him that only about $20,000 of fees had been earned, and that only about $80,000 of claims not settled and appropriated for by Congress were in their hands. Baker, in his answer and in his testimony, positively denies making any such representation or anything like it. There is no proof, or pretense of proof, in support of this allegation of Cummings. The evidence, aside from the mere statements of the two parties, clearly confirms Baker's statement, for both parties agree that nearly or quite three weeks before the sale on the 6th of September, 1886, Cummings had in his possession, for the purposes of examination, all the papers and documents relating to the affair, which papers and documents would show precisely and easily the number of cases for which Congress had made appropriation that were in the charge of the firm. These papers would show the

amount that each claimant was entitled to, and both parties knew and the papers showed the percentage of fee to be deducted from the claim. These papers showed that at that time a little more than $31,000 of fees had been earned, which would be available if all the clients would send powers of attorney to draw the money from the treasury. Cummings' own evidence also, as well as that of Baker, shows that on the next day after the sale, Baker placed in Cummings' hands the schedule sheet (which had not been made up at the time the other papers were delivered to Cummings), which contained a complete tabulated statement of each claim that Congress had appropriated for, what, if any, money had been received upon it, what remittance had been made to the client, and in fact everything (Record, page 23). This paper, together with the other papers and documents, remained from that day for about three weeks in the sole possession of Cummings, who was during all that time carrying on the business of these cases for Baker, in Baker's absence from Washington; and Cummings himself made several entries in that very schedule of the same kind as those existing when he received it. It is impossible to believe, therefore, that Baker made these false representations alleged in the bill as to the amounts of these claims and allowances; for he would know that the very papers he had put into the hands of Cummings for examination would show that such a statement was untrue, and that Cummings would ascertain its untruth on a moment's examination. It is also impossible to believe that the very next day after such a supposed gross misrepresentation, Baker should have deliberately placed in Cummings' hands the schedule for Cummings to use, as his agent, which also showed separately and in personal detail that the fees earned amounted to more than $31,000. The bill must fail, therefore, so far as it is founded upon personal misrepresentation.

II. The bill cannot be maintained on the ground that Cummings was misled as to the amount of these claims and fees, whether by himself or by circumstances. Cummings was a man of just as much experience in life as Baker, and with a mind just as well trained for intelligent investigation and defense of his own interest as was Baker's. All that Cummings lacked was a sense of his partnership duty and a disposition to do his share of the partnership work. He was not misled, even by himself, for he worked in the inspector cases more or less from time to time in the office, and had, in common with Baker, the Treasury registers, the House reports, and copies of the letters sent to claimants soliciting business, the powers of attorney, &c.; and, as we have stated in the preceding point, he had, immediately after the sale, the condensed statement which showed the very truth, and acted upon it for Baker's benefit, after the sale. When Baker returned, about the end of September, 1886, Cummings does not pretend that he made any complaint or other suggestion to Baker on the subject of the amount of fees earned being greater than $20,000, or on the subject of outstanding possibilities in respect of claims which were more than $80,000.

The only possible pretense of Cummings being misled is the fact that both parties testified to, that Baker refused to advise Cummings as to whether he thought it was for Cummings' interest to take $15,000 for his interest in the inspector cases, but said that $15,000 was more than he could afford to pay. It is claimed from this statement that because the fees then already earned amounted to more than $31,000 (although all of them had not then been collected) Baker was not stating truly that $15,000 was more than he could afford to pay. Reserving the point that this statement, if incorrect, was not one which would justify setting aside the sale, it is insisted that this statement of Baker's opinion was true. The evidence of both parties shows that during this long partnership Baker had been the principal

fee winner for the concern, and had done by far the largest part of the work; and it is manifest that in morals and justice Cummings was not entitled to a half share in the fees. Baker wished to dissolve the partnership. It appears from Cummings' own testimony that "from the first part of '86 up to September of the same year, he (Baker) frequently broached the subject, but nothing was done one way or the other. In August, 1886, he became very strenuous and said that he wanted this thing settled" (Record, pages 20, 21). "This thing" was their partnership relation, which, as appears from the testimony of Baker, Baker had wished and tried to terminate for many months before this sale, but which Cummings was unwilling to assent to, although, of course, either party had a right to terminate the partnership. In this state of things, Cummings proceeds to say: "Mr. Baker, I make you this proposition: I will take one-half fees in all the cases in which we have powers of attorney and contracts prior to the 1st of January, 1886, or I will take one-third of all the fees in all the cases" (leaving him two-thirds), "or I will take $15,000, as you offer, according to what you think is best for me" (Record, page 21). Baker, as he ought, declined to advise; and Cummings says that this offer of Baker was before Baker had given him the papers and documents, so that Cummings had these propositions under consideration for weeks before the trade was concluded. This offer also included, as both parties agree, the giving up by Baker of his half ($7,500) of the fees, &c., earned and to be earned by Cummings in the Cooke assignment, so that what Cummings really got on that occasion was $22,500; and he got also—quite as important as the money consideration—the consent of Baker to go on with the rest of the partnership, and not to dissolve it. The partnership, as to the other affairs, did go on from that time until August 1st, 1889, when the partnership was dissolved by mutual consent (Record, page 15). Cummings himself says in his testimony that he "had no reason to be dissatisfied

with the sale until the summer of 1888," and until he "discovered that there were over $200,000 of [possibility] cases, when, according to his representation to me, there was only $80,000." This alleged representation was not proved. These cases, it will be remembered, were prospective chances, in only about one hundred and fifty of which had any powers of attorney been obtained down to the time of the sale, and they were cases which had not been allowed in the Department, and for which Congress had made no appropriation, and did not make any for a long time after the sale. It was then for the first time, according to Cummings himself, when he saw that Baker was getting large amounts of fees, that he concluded to be dissatisfied with what had been done in the sale of 1886. Cummings himself also says: "I knew enough to be posted in regard to these claims" (Record, page 41). Cummings also says that after the sale of 1886 there was very little done, because Congress had refused to make appropriations for the year 1886–7 (Record, page 43).

When the partnership was dissolved, or soon afterwards, an account was stated between the parties, on which a balance of $2,700 appeared to be due to Baker (Record, page 67). This balance was not paid, and on the 19th of December, 1889, Baker sued Cummings to collect it; and when the suit was about to be brought to a state preparatory for trial, when Cummings must answer or have judgment against him, the bill in this case was filed on the 1st of February, 1890.

III. It is insisted that the principles of the Statute of Limitations should apply. This limitation was, by the law of the District, three years. The partnership, so far as it regarded the inspector cases, was confessedly terminated on the 6th of September, 1886.

The continuance of the partnership in respect of all other matters can have no effect upon the question respecting the rights and duties of the parties connected with the inspector

cases. It is precisely the same as if their partnership had consisted solely concerning inspector cases, and had terminated under the circumstances before adverted to. It is, of course, admitted that the Statute of Limitations will not apply in equity in cases where there had been any substantial misrepresentation or concealment by one party in respect of the rights of the other until the wronged party discovered, or had the means of discovering, the wrong.

We have shown that there was no misrepresentation of any fact. We have shown that Baker refused to advise Cummings as to whether the trade would be a good one for him. We have shown that the trade was in fact—measured by the standard of mere justice—a good one for Cummings. We have shown that, viewed in the light of his legal rights in the partnership, he sold his interest in these particular cases for all that they were then worth and for an *additional* consideration in the continuation of the partnership in respect of all their other affairs. We have shown that Cummings had the intelligence and the means in his own hands, from time to time and all the time, of knowing precisely how much had been earned at the date of the sale, and that he did know it certainly the day after, and that he had the same intelligence and means of knowing precisely, and undoubtedly did know, the number and amount of the prospective cases that were then in the hands of the firm.

What right had Cummings, under such circumstances, to lie by for years and years and wait until he was about to be compelled to pay the balance of the account stated, and then bring his suit? Cummings was not at a distance; he was in the same office all the time. He was carrying on with Baker the continued partnership affairs; he was, according to his own statement, assisting Baker from time to time in prosecuting and collecting the prospective cases for which later appropriations were made. He was an astute man, and kept track in his private minutes of everything. One of these private minute papers he brought to light for the first time

when the partnership was about to be finally dissolved. This paper appears in the Record at page 79. Cummings swears that he wrote that paper at its date, September 7th, 1886. Some of its statements are manifestly untrue, as, for instance, in respect of the formation and change in the terms of the partnership in 1875–76. In the paper he says that Baker first made the proposition about the inspector cases in January, 1886, seven months before the trade was concluded (Record, page 80). He says, truly, that he told Baker that he recognized that he had done more manual work for the firm during the last eighteen months (Record, page 81). He says that the inspector business was perfectly simple, and could be done by a woman, in large part. He says that on the 19th of August Baker again pushed the subject, and that he replied that he didn't believe in any such thing; that he didn't know what powers of attorney they had, &c.; and that Baker said, "There are the powers; pick them out." He says he tried it, but could not make any headway, and that he had been kept in ignorance of their condition. He says that "Baker always keeps the powers or contracts locked up," &c. This was untrue. The testimony of both parties shows that they were locked up at night in a desk, just as all such things are, and that during business hours they were on their desks and frequently examined by both of them. He then says that Baker is still persistent; that he doesn't want to have trouble with him, and that, to please him, he has made up his mind to do what he considers an unjust thing to himself. This shows that he knew, or thought he knew, what the state of things was that he conceived would produce an injustice if they traded on the basis proposed; that he offered to do one of three things, leaving Baker his choice; but that he depends on Baker's taking his choice in a way that Baker should think best for him (Cummings) (Record, pages 81, 82). He does *not* say, what he is forced to admit on his examination as a witness, that Baker declined to give him any advice, and told him

that he must judge for himself. He says that if the allowed and paid cases give more than, say, $25,000 fees, that Baker has deceived him, &c. *On that very day and at that very time, according to his own testimony, Mr. Cummings had in his possession, control, and use, as the agent of Baker, a complete schedule of all the allowed and appropriated for cases, so that at the very moment of his writing this private memorandum he knew that he was writing it untruly.*

We do not call the attention of the court in detail to the particulars of this paper referring to alleged intrigues with Department officers and judges further than to say that when Mr. Baker was informed of these pretended performances he reproached Cummings for such misbehavior. Most, if not all, the officials referred to are dead. We believe these tales to be pure inventions, or else to be grossly perverted statements of interviews in which the officers and judges referred to said nothing improper, and whose only fault was—if any such interviews occurred—that they did not turn Cummings out of doors. Regretting to be obliged to put in print even a reference to the gentlemen referred to, it is our duty to do so to the extent we have, in order that the court may see the kind of man that Cummings describes himself to be, and to ask the court to consider how far any statement of his, either of fact or of motive, can be relied upon as true or just.

It is evident from the history of these transactions, to which we have referred, that Cummings himself knew that he had received all, or more than all, he ought to receive in respect of the cases for which Congress had at the time of the sale made appropriations; and that it was at last only in reference to the appropriations and cases that had not been adjudicated or obtained which occurred long after the sale that he took an opportunity to determine whether he would endeavor to break up the trade or not. If the future cases should turn out to produce small results, or none at all—if Congress should refuse to appropriate, then, in his mind, it

was good trade ; if it should finally turn out, after years, that enough further cases should be obtained and proved up, and enough appropriations made to make the receipts of Baker quite large, then Cummings would insist that he had been defrauded ; if it should turn out the other way, then Cummings would be satisfied that he had made a good trade. He, all this time, went on in the partnership respecting the other affairs, in possession of the same office and room, helping Baker from time to time in respect of these inspector cases then owned by Baker, and waiting his opportunity to determine in which way he could make the most money. He says, when asked, "You were waiting for the Statute of Limitations to bar the whole transaction ?" Answer: "I was not, sir ; *I kept that pretty well in view.*" This is the suitor who invites a court of equity to treat him as an innocent and deceived partner, kept in ignorance of his rights for a period of more than three years, and who asks the court to say, in the face of this history, that he is entitled to relief.

IV. The circumstances to which we have already referred bring the case distinctly and fully within the established rules of courts of equity in respect of laches. It is not necessary to refer to the great number of cases upon the subject. As applied to the particular conduct of Cummings, however, we beg to quote the language of the court in Hollingsworth *vs.* Fry, 4 Dall. 345, "Equity will not suffer a party to lie by till the event of the experiment shall enable him to make his election with certainty of profit one way, and without loss any way." This sort of conduct is precisely what Cummings himself describes himself as endeavoring to carry on. He must wait and see how much should be got by Baker's fishing in the sea of claims, and what could be gathered into the nets of appropriations and contingent fees, and keeping the Statute of Limitations always in mind, until he could make up his mind whether it was best to assail the trade or to be satisfied with what he had already got.

It may be added that laches does not depend necessarily on the limitations of a statute. They may destroy any right, or pretended right, within periods much within the Statutes of Limitations. Haywood *vs.* National Bank, 96 U. S., 611. Cummings took charge of the inspector business for Baker on the next day after the sale. He had all the papers of every kind in his immediate control and use. He canceled the $15,000 check, and on three different occasions drew $5,000 in payment for the sale. He carried on the business for weeks and weeks as agent for Baker. He had the means, in the public records and documents and in the powers of attorney, of knowing all the chances for the future. He saw they were small, for Congress would not appropriate. He studiously and intentionally concealed from Baker any discontent that he pretends he felt, and waited for the uncertain chances of the future to enable him to decide how he could make the most money; and waited until after the stated account of the partnership transactions showed him indebted to Baker to a considerable amount, and until after Baker had sued him for it, before he found that he was sufficiently wronged to bring this bill.

V. We submit also the following suggestions and references to the proofs, separated under different heads, of these transactions, which we think may be more convenient to the court, as follows:

CONSIDERATIONS AS TO THE REAL BASIS UPON WHICH THE SALE OF SEPTEMBER 6, 1886, WAS MADE, AND UPON WHICH MR. BAKER CONSENTED TO CONTINUE THE PARTNERSHIP AS TO BUSINESS NOT INCLUDED THEREIN.

That the negotiations which culminated in the sale of September 6, 1886, were for a long time under consider-

ation, is fully shown by the testimony. Mr. Cummings says (p. 20): "From the first part of 1886 up to September of the same year he (Baker) frequently broached the subject." * * * "In August, 1886, he became very strenuous." In his testimony (p. 59) he says, "Mr. Baker, in January, 1886, began talking about those cases that he had done the most work in, and that he thought that he should have the most fee. He proposed then that he should have all the fees in the cases taken since the 1st of January, 1885. * * * After that, I should say some time in August, 1886, he still insisted on some sort of a trade. *I did make the proposition to him* that I would take one-half of the fees in cases held by us prior to January, 1886, because it was in January, 1886, that he first made any complaint, *or that I would give him two-thirds of all the fees in the inspector cases irrespective of when they were taken*, or that I would take $15,000, as he thought best for me." On page 21 of his testimony he says the same in substance. He there says he said, "*Mr. Baker, I make you this proposition:* I will take one-half fees in all the cases in which we have powers of attorney and contracts prior to the 1st of January, 1886, *or I will take one-third of all the fees in all the cases* (*leaving him two-thirds*), or I will take $15,000, as you offer, according to what you think is best for me." In various forms these alternative propositions are stated substantially the same throughout the testimony of Mr. Cummings. Mr. Baker corroborates Mr. Cummings as to these points (pp. 93 and 94, 98 and 100). It is, therefore, proved by the testimony of both parties that the trade was under consideration from January to September, 1886, and that its preliminaries were especially under consideration during the month of August preceding the sale of September 6, 1886.

It should be noted that according to his own testimony the proposition upon which the trade was made came from Mr. Cummings (pp. 21, 59), who is now seeking to have the bargain set aside. That the trade was made upon the

propositions he submitted, is equally proved by the testimony of Mr. Baker (pp. 97, 98, 121). Upon these two points they are agreed. It is also specifically stated by Mr. Baker (p. 94), and nowhere denied by Mr. Cummings, that he (Cummings) elected to take the $15,000 in cash. Mr. Baker had previously suggested a dissolution of the firm and a division of the business in hand upon the first day of January, 1885. This Mr. Cummings had refused, but had suggested the date of January 1, 1886, instead. To this Mr. Baker had replied (pp. 93, 99) that it "would not be fair, because he (Cummings) had become assignee of Mr. Cook in 1884, and after that date had devoted practically no time to the affairs of the firm." Here the negotiations as to a given date seem to have ended,—the proposition of Mr. Cummings that he would accept one-third of the fees in the inspector cases, leaving two-thirds to Mr. Baker (pp. 21, 59), taking its place and becoming the basis of the sale of September 6, 1886, for $15,000 in cash and Baker's share of the fees in the Cooke assigneeship (pp. 32, 98, 99, 199, 269). Now, as Mr. Cummings has testified that he offered (pp. 21, 22, 59) "to take one-half of the fees in cases held by us prior to January, 1886" (Mr. Baker to have all the fees in cases after that date), or, that he "would give him (Baker) two-thirds of all the fees in the inspector cases irrespective of when they were taken" (p. 59), and had said, page 21, "I will take one-third of all of the fees in all the cases, leaving him (Baker) two-thirds," and, on page 81, had written, under date of August 26, "I will do *one* of *three* things: I will take $15,000 for my interest, *or* I will take one-half fees in all cases held by us prior to January, 1896, *or* that I will take one-third fees in all cases inspectors," and as has been shown these negotiations began early in the year and were especially active during the month of August, before the sale of September 6, 1886, *is it not evident and conclusive that the bargain, when made, was concluded upon the basis of one-third of the fees to Mr. Cummings and two-thirds of them to*

Mr. Baker? Otherwise, what is the significance of Cummings' proposition to take "one-half of the fees in cases held by us *prior* to January, 1886"? Did it mean, as the court below held, and as the auditor, in pursuance of its decision, has found, that, after all the cases are settled, Mr. Cummings is entitled to *one-half* of all the fees in all the cases up to September, 1889—three years after the sale and three years and seven months after the time fixed by him? Or when, upon his own volition, he proposed at least a month before the sale (and he testified to that fact voluntarily) that he "would give him (Baker) two-thirds of all the fees in the inspector cases *irrespective of when they were taken*," or that he "would take $15,000 in cash," did he mean to imply, as the court below has practically held, that he (Cummings) calculated the $15,000 to be paid him on the basis of one-half fees to him instead of the basis of one-third fees to him and two-thirds to Baker, as he himself had suggested? Which is the natural, legal, and common-sense view of the matter? Besides this, Baker has testified that the trade was made on the one-third and two-thirds basis, as Cummings had offered (pp. 98, 197). It was not in the mind of either of them that Cummings was to receive for his sale to Baker one-half of the then present value of the fees. *It is worthy of notice that, though Baker in his testimony has in one form and another asserted and reasserted that the bargain of September* 6, 1886, *was made and concluded upon the basis of one-third of the fees to Cummings and two-thirds of them to Baker, that Cummings nowhere in his testimony denied that fact.*

These things being so, does it not justly and logically follow that Baker's remark in relation to the payment of the $15,000 in cash for all of Cummings' "interest in and right to fees in the so-called inspector cases," when he said "that is more than I think I ought to pay, but to end the matter I will do it," (p. 121) should be considered and judged upon that one-third and two-thirds basis? The court below places

great emphasis upon that remark and upon the fact that at the time of the sale Mr. Cummings upon the old and superseded one-half basis was entitled to fully $15,000 from the cases paid in 1886. On the one-third basis Mr. Cummings was entitled to a little over $10,000 from the fees of 1886, which is the amount he said (p. 4) he expected from those fees, and that the trade was made on that basis is further evident from the fact that although he says (p. 23) "The amount of the claims that had been adjudicated and which were in the process of collection I *discovered* of course *within a day or two after Mr. Baker had delivered the schedules*," which was only two or three days after the sale, as he had the schedules the next day thereafter by his own admission, yet at that time he made no objection to the *bona fides* of the transaction. This is still further evident from his voluntary statement (p. 133) where he says, "My whole idea as to whether I had made a poor trade or not had nothing to do with the amount of fees received in 1886." *If according to his judgment at that time his share of those fees had amounted to more than the whole payment to him for his entire interest in the inspector cases, would he have doubted whether he "had made a poor trade" or not?* He knew he was entitled to only about $10,000 of those fees, which is about one-third of the net fees, ($31,488.70) of 1886 (p. 98), and hence he said it was necessary for him, before he could determine whether or not he had "made a poor trade," to ascertain, as he repeatedly says in his testimony in one form or another, "the future business that would come in."

The fundamental error of the decision below was in finding fraud or misrepresentation on the part of Baker. This is disclosed by the opinion of Mr. Justice Hagner adopted by the Court of Appeals, in the assumption that Cummings supposed he was getting the present equivalent of one-half of the fees that would be realized and, as the fees in the cases then appropriated for and in process of settlement amounted to $31,488.70, that he was being paid out of his own money.

It is submitted that the " one-half basis " has been shown to have been set aside by mutual understanding and agreement and that the one-third and two-thirds division of fees had been mutually agreed upon as the basis for future settlements before the $15,000 was paid and received.

Baker states (pp. 98 and 99) that he, in addition to the $15,000 paid in cash, also allowed Cummings $7,500 additional, being one-half of the fees Cummings said (p. 32) he expected to receive for services in the assigneeship of H. D. Cooke & Co. (See also pages 197, 201, 229, and 269.) It is admitted that Baker surrendered in part payment whatever those fees should be, and it is certain that after the trade of September 6, 1886, Cummings regarded those fees as wholly his own. While Mr. Justice Hagner in his opinion proceeds upon the assumption that Cummings only received $15,000, yet the decree for an accounting passed by him (p. 201) requires the auditor to credit Baker with one-half of the fees of the Cooke assigneeship, as well as the $15,000 paid him in cash. The auditor allowed Baker (p. 225) only $2,624.44 on that account, but rather than have that matter further contested in this suit *or others* the plaintiff " in open court " (p. 269) requested that the defendant, Baker, be allowed " the further sum of $4,875.56," *making in all* $7,500, *being the full amount Baker claimed*, and the final decree signed by Judge Hagner so ordered. Therefore the *full compensation actually received by Cummings* in payment for his interest in the fees in the inspector cases *was* $22,500 as Baker had uniformly claimed and asserted. Upon the accounting before the auditor it was not claimed that Baker had collected any fees in the inspector cases not returned in the account submitted by him (Exhibit H. M. B., No. 1, p. 259), and the auditor (p. 226) found the net amount thereof to be $97,-820.14.

If after all the fees are secured and audited (and there is no claim that Mr. Baker's prosecution of the cases was not vigorous, persistent, and successful) it is shown that on the

basis of one-third of those fees to Cummings and two-thirds of them to Baker, Baker paid Cummings all that the cases allowed, suspended, pending, unsettled and outstanding *were reasonably worth on the 6th day of September*, 1886, then Baker should be acquitted of any actual, intentional, or unintentional misrepresentation or fraud, and the bill dismissed with costs.

On page 45 of the testimony, Cummings admits that he was furnished with "a list of doubtful or suspended cases." That list was filed (see page 96) and is known as Exhibit H. M. B., No. 4 (p. 179). On page 263 there appears Exhibit H. M. B., No. 2, before the auditor, and shows that on those suspended cases $38,404.31 were allowed, yielding $9,087.08 in fees. On page 96 of the record Mr. Baker testifies that after the trade was completed he offered to sell Cummings those cases for 5 per cent., or one-fifth of the full fee of 25 per cent. *This is nowhere disputed by Cummings and certainly is conclusive of Baker's estimate of their value.* Therefore four-fifths of the entire fees of $9,087.08, which is $7,269.64, should be deducted from the $97,820.14 returned by the auditor, leaving $90,550.50 to be accounted for.

On page 44 of the record Mr. Cummings testified that Mr. Baker gave him "a list of cases also of those persons who had claims, but which he (Baker) had been unsuccessful in getting." By reference to page 96 of the record it appears that Mr. Baker filed that paper as an exhibit, known as H. M. B., No. 6 (p. 182). In the testimony before the auditor (p. 264) there appears an exhibit known as H. M. B., No. 3, which is a list of inspector cases secured by the defendant Baker after the date of the sale of September 6, 1886, and shows the amount allowed and fee collected in each case. This exhibit includes 58 cases and shows that from them $15,134.81 in fees were secured. Of this number 24 names or cases appear on Exhibit H. M. B., No. 6, showing that 34 names or cases were absolutely new, not known by either Baker or Cummings, at the time of the sale, to be

in existence (p. 233), and, of course, should not be used to count against the integrity of either of them. These 34 cases yielded $7,038.35, which being deducted from $90,-550.50 leaves $83,512.15 of fees yet to be explained. The 24 cases appearing on the list (H. M. B., No. 6, p. 182), submitted to Mr. Cummings, resulted in $8,096.46 of fees. At the time of the sale these cases were known to exist, and were supposed to be good. Mr. Baker had tried to secure them and had been unsuccessful. Mr. Baker has testified (p. 233) that he regards the possession of such a list as not worth more than one-fifth of the fee. Mr. Cummings did not dispute the assertion, and it is presumed agreed with it. Probably no one would think that too low. Accepting it as a fair one in determining Mr. Baker's estimate of value, then there should be a further deduction of four-fifths of $8,096.46, or $6,477.17, which being deducted from $83,512.15 leaves $77,034.98 of fees to be explained by Baker, one-third of which is $25,678.33. As has been stated, Mr. Baker paid and allowed Mr. Cummings $22,500, being, after the reasonable deductions above made in estimating the then value of the fees, only $3,178.33 less than a full one-third of the fees as shown by a judicial accounting *after* all the fees had been secured,—a small difference on which to found a bill to rescind a sale acquiesced in without complaint for three years. Is it a sufficient amount upon which to impale the integrity of a gentleman in whom Mr. Cummings himself says he "had every confidence," and concerning whom he testified (p. 28): "As I have often said, that, if I was going to leave the country and be gone four years, I would not hesitate to take all my property and securities and put it down on Mr. Baker's desk and say, 'Mr. Baker, I am going to be gone for some time,' and when I came back again I have no doubt that I would have an entire and true accounting for the whole thing"?

More than this, in Exhibit H. M. B., No. 12, in a letter to Mr. Cummings, dated August 13, 1889—six months before

this suit was filed—Mr. Baker says: "There have been more allowances than I anticipated," and adds, "I am not blamable for that" (p. 199).

As Mr. Baker has incidentally testified (p. 97), it is evident that the cases on file, but unacted upon at the time of the sale, must have been supposed to include and did include many cases similar to those then suspended and which were held to be worth not more than one-fifth of the stipulated fee. A small number of such cases would have reduced the fees so that the amount paid Cummings would have been in excess of one-third of the then probable fees, as shown by a subsequent accounting and made Mr. Baker's words as to what he could afford to pay *literally accurate*. Again, Mr. Baker assumed all the risks pertaining to the cases. They were not small. It is in evidence that for one full year (1887) there was no appropriation for their payment, and that Mr. Baker employed assistance to secure the appropriations, without which there could be no fees. Had Mr. Cummings been paid even the one per cent. fee he demanded for services in connection with the drafts long after the sale (see letters, pages 83 and 164), as per his estimate of $2,800, that alone would have nearly offset the excess of $3,178.33 noted above. Still further, it is to be remembered that the one-third and two-thirds basis is Mr. Cummings' own voluntary offer.

Two prominent and experienced attorneys skilled as such in the prosecution of claims against the Government, and both with *official* service in the settlement of claims in the Treasury Department, Mr. Rutherford and Mr. Butterfield (pp. 241 and 244), estimate the value of fees in cases like those under consideration at less than one-third of the contract fee. Mr. Rutherford says one-fifth and Mr. Butterfield says one-fourth of a twenty-five per cent. fee. Judged by either of those standards, Mr. Baker not only paid more than he could afford, but was foolish to attempt the cases as he did. Certainly there is no justification for holding him guilty of deceit or

fraud, or for requiring him to pay the amount adjudged against him in the court below.

But has not Mr. Cummings testified that Mr. Baker told him that the cases in process of settlement at the time of the sale, September 6, 1886, would not yield over $20,000 or $22,000 of fees, when they did yield over $32,000, and that the subsequent cases would be only about $80,000, when they did amount to over $250,000 with proportionably increased fees? Yes, Mr. Cummings has so testified. The exigencies of his case so required; otherwise he could have no hope of setting aside his formal bargain and sale. Nothing in the whole case sustains his testimony on that point. His own statements as to his propositions of sale (as has been shown above) are contrary to his testimony in that regard, and on many points his testimony is contradictory and absurd. If ever testimony should be suspected on account of self-interest, why should not the doubt be applied to that of Mr. Cummings? The testimony of Mr. Baker squarely contradicts that of Mr. Cummings. He says (p. 97 and elsewhere) that he did not tell Mr. Cummings that the allowances and fees would be as he has asserted he did. We submit that the probabilities are in favor of Mr. Baker's testimony, because his whole conduct, as well as that of Mr. Cummings from 1886 to 1889, sustains the natural presumption that Mr. Baker had acted and was acting in good faith. Had it been otherwise, had Mr. Baker lied to Mr. Cummings in regard to the amount of fees to be realized from the cases settled in 1886, would he, the next day after the sale, have delivered to Mr. Cummings the schedules of fees derived from those cases, and a list also of the payments made to other attorneys, which, if the trade was not made on the one-third and the two-thirds basis, would have convicted Mr. Baker of fraud at once? The statement that the amount of those fees was to be reduced by still other payments to other attorneys is a pure invention of Mr. Cummings, and is nowhere asserted or sustained by Mr. Baker. Here it should be noted that Mr. Cummings

by cancelling the check for $15,000 given him by Mr. Baker, and paying himself with the checks signed in blank by Mr. Baker, as stated in the testimony (pp. 60, 94 and 95)—those checks used in paying himself being three in number, and each for $5,000, dated respectively the 7th, 15th, and 29th of September, 1886, (see p. 60), did on three separate days after the sale and after the schedules were admittedly in his possession—one of those days being more than three weeks after the said sale and delivery of the schedules, and only two days before he expected Mr. Baker to return—approve and ratify the said sale three separate times, two of which were after he says (p. 23) he had discovered "the amount of the claims that had been adjudicated * * * because these schedules contained the name, the amount, *the fee*, and all the data pertaining to each case." And when Mr. Baker returned and resumed his place in the office with Mr. Cummings, he (Cummings) never even hinted to him that he had a suspicion that all was not fair and honest in the transaction concerning which Cummings admits he had full knowledge. There can be no doubt that Cummings then believed himself entitled to payment in proportion to one-third fees only, and that he knew he had been so paid from the fees of 1886. Does the conduct of Mr. Cummings at this time and under these circumstances sustain his assertions or the testimony of Mr. Baker?

Again, if we deduct from the net fees collected by Mr. Baker (p. 226) only the amount of the fees obtained by him in cases *secured after September* 6, 1886, the date of the sale (pp. 263–5), we find as follows:

Total net fees collected.....	$97,820 14
" fees from cases secured after Sept. 6, 1886.	15,134 81
Total fees from cases on file Sept. 6, 1886.....	$82,685 33
One-third of which is.....	$27,561 77
Mr. Cummings was paid.....	22,500 00
Excess of fees collected over payment.....	$5,061 77

Which represents the amount Mr. Baker received for all the risks he assumed of bad cases (p. 236) and generally in connection with the business covering a period of more than three years.

No one can say it is a large compensation or one which is an indication of either concealment or misrepresentation on the part of Baker.

And further let us consider this whole matter upon the basis of the bill as filed and Mr. Cummings' testimony (pp. 3, 4, 21, 22). He says Baker *told him* "that the amount of fees earned, and payment of which was already provided for by act of Congress, was but the sum of $20,000, and the amount of all other claims of said inspector cases not then appropriated for would be about $80,000, in which said last-mentioned cases the expected fee to accrue to the firm would be about $20,000."

If this is correct (see Baker's emphatic denial, p. 97), then Cummings would have been entitled to his share of $40,000 of gross fees, which could not have yielded Mr. Cummings upon the one-third basis over $13,333.33, or upon the one-half basis over $20,000. It has been shown that he received from Baker $22,500—$15,000 in cash and $7,500 fees in the matter of the Cooke estate. If his allegation, as stated above, is true, he must have then known that he was getting the best of the trade and would not have asked advice of Baker (pp. 21, 94, 97) as to it (which Baker refused), for under the one calculation he received $2,500 more than one-half of the alleged stated fees, and under the other $9,166.67 more than one-third of them, and was to have no trouble, labor or risk in connection with them. His own figures prove the falsity of his allegations. No one can suppose that Mr. Baker would have been willing to have paid a cash bonus for the privilege of assuming all the work, expenses, and liability of the cases, yet such must be presumed to have been the fact, if Mr. Cummings' statements are true, as the $15,000 paid him in cash, to say nothing of the $7,500 fees

relinquished to him in the matter of the Cooke assignment, is in excess of the $13,333.33 he had offered to take for his share of the fees, as thus stated by him. His allegations do not stand the test of the facts known to both Baker and Cummings at the date of the transaction under consideration.

MR. CUMMINGS' KNOWLEDGE OF THE INSPECTOR CASES STATED BY HIMSELF.

In the complainant's bill (pages 2 and 3) he states in a general way the basis of those claims. In his direct testimony (pages 19 and 20) he is more explicit, and says: "*It was a matter of simple calculation, knowing the time, knowing the amount that he had received, and knowing the amount that we contended he should receive, to estimate what the amount due to each man was.*"

On page 37 he says he wrote "*as many letters as Mr. Baker*," and that Mr. Baker was absent for weeks at a time, and that he attended to "all the correspondence" then.

On page 41 he says: "*I probably knew, if not as much as Mr. Baker, I knew enough to be posted in regard to these claims.*"

On page 42 he says: "I didn't say that I did as much work as Mr. Baker, *or that I wrote as many letters as Mr. Baker*, but I simply say that I did all that Mr. Baker ever asked or requested me to do."

On page 48 he testified as follows:—

"Q. How did you ascertain the amount that each person cliamed?

"A. Mr. Baker ascertained that by taking the information that he had gathered from various sources—Treasury registers and otherwise—including the time that the man was in service, and seeing the amount that he had received, then calculating the amount that he was entitled to receive under the Revised Statutes, and the difference was the amount that was claimed. Then the whole case was proved up by docu-

mentary or record evidence and there was no testimony taken orally; no testimony taken orally, but in many cases there were filed affidavits of the claimant, stating his services, and that he was on duty at all times and either did service or was ready and present to do service. Many of those affidavits were prepared. I know myself that I typewrited a great many of them that were of the same character except as to the name of the claimant, the time, and the location.

"Q. What I wish to know is this: Were not the several amounts that were found to be due to the respective inspectors made out from the report or documentary evidence in the office of the Treasury Department and the Revised Statutes of the United States?

"A. I expect that they were.

"Q. You know of no other mode of ascertaining the amount of services for which they were to be paid than that I have just mentioned?

"A. I know of none other."

THE CONTRADICTORY TESTIMONY OF MR. CUMMINGS.

I.

In his bill (page 1) Mr. Cummings says that the co-partnership between the complainant and the defendant was formed on or about the first day of January, 1876. On page 19 he says "the date of the partnership" was "in the Fall of 1874." On page 69 he says it was in September, 1874. On page 80 he says that it was in the Winter of 1875–76 that he consented to a full partnership. (See page 87.)

II.

On page 1, in his bill of complaint, Mr. Cummings says, "That the *complainant* and the defendant have, for more than fifteen years last past, been attorneys at law, and engaged in the general practice of their profession in the various courts of the District of Columbia and of the United States, *as well*

as before the Executive and Legislative branches of the Government."

Page 19 he says, "I confined myself entirely and exclusively to the practice of Government claims before the Executive Departments."

On page 29 he says, "I never was admitted to practice in the District Courts in the District of Columbia." On same page he says he was admitted to the bar of the Court of Claims in 1864, which he changes on page 30 to 1874; yet on page 131 he gives the numbers of certain cases in that court which he says he "prosecuted" in 1873, and prepared every paper in them.

Again on page 29 he says he does not know whether or not his name appears on the roll of attorneys of that court.

On page 30 he admits that he had never been admitted to practice before the Court of Alabama Claims or the Supreme Court of the United States. On page 66 he says he was admitted to the Court of Claims "on no man's motion," but "in chambers" by Judge Drake. On page 135 he says he was admitted to the bar of the Court of Claims in June, July, or August, 1873.

On page 149 he admits that since the filing of the present suit (February 1st, 1890) he has applied to have his name put on the roll of the Court of Claims, which was granted, and that he took the oath.

III.

On page 23, referring to Exhibit H. M. B. No. 3, page 174, he says that from it he discovered, of course, within a day or two after he had the schedules, the amount of the adjudicated claims then in process of collection, and he tells the nature and purpose of those schedules and states his doubts concerning the fees represented thereon. On page 132 he says he paid no attention to the schedule and that it never came into his head that there was anything wrong

about it, and on page 140 he testified in regard to the same schedule as follows:

"Q. When did you first look at that paper?

"A. I first looked at the paper near or probably the same day, or the next day, or at the day it was that the first letter came in containing a power of attorney to indorse the draft.

"Q. Then you knew what the paper was, I suppose?

"A. Yes, sir.

* * * * * * * *

"Q. It was just such a paper that, under all the circumstances, you could have made yourself, couldn't you, if one had to be made?

"A. Why, certainly."

IV.

On page 29 he was asked:—

"Q. State, if you please, whether or not the defendant in this cause ever urged you to become a member of the Supreme Court of the District of Columbia, of the Supreme Court of the United States, or the Court of Claims.

"A. He never did, to my knowledge.

"Q. Would you be likely to recall it if he had urged you to do so?

"A. I think I would.

"Q. Did he ever offer to move your admission in any of the courts that I have named?

"A. Not that I know of."

On page 43 he was interrogated as follows:—

"Q. Did Mr. Baker ask you to be admitted to the Supreme Court of the United States and argue that case yourself?

"A. He may or may not, but I presume he may have done it. I don't know."

V.

On his cross-examination, page 31, he was asked about a case at one time pending in the Treasury Department in

which one J. M. Vale was connected, and he denied all knowledge of the case, and said he did not know any attorney by that name.

In his letter to the defendant, dated October 5th, 1889, page 164, he mentions the case, and says Vale was in it.

VI.

On page 46 he was asked as follows:—

"Q. You went all over the papers and books that Mr. Baker had given you while they were in your possession, didn't you?

"A. I did not."

And soon after, page 47, he was asked if he examined certain ones of these papers, and he replied, "If he called it to my attention I examined it, *because I examined whatever he gave me.*"

VII.

On page 20 he testified that after the test cases were decided in the Court of Claims "that no question could be raised *or was raised* by the Department in regard to any of these cases. As I have said, it was like a row of bricks; you start one to going and the rest follow."

On page 58 he testified that "there were a great many cases, as those of night watchmen, deputy collectors of customs, who were doing the duties of inspectors, and inspectors stationed on the Canadian border, of which there were very many who were paid only during the period of navigation; that it required on Mr. Baker's part *a great deal of evidence other than that* that could be gotten from the registers of the Treasury. I know that in case after case I have written for Mr. Baker affidavit after affidavit to be filed in the case by the claimant, showing the time of his service and the place of it." (See also page 149.)

VIII.

Speaking of the collections made by him in 1886, during Mr. Baker's absence from September 7th, 1886, to the first day of October of the same year, which collections were entered on the schedules known as H. M. B. No. 3 (page 174), he said, pp. 22 and 23 :—

"I went on collecting the cases, crediting the amount of fees to Mr. Baker's account, until I collected $5,000 *more of fees.* I then paid myself *out of my collections* a second $5,000 on the 15th of September, 1886.

"Q. By putting the money in the bank?

"A. By putting the money to Mr. Baker's credit in the bank and filling up a blank check of his for $5,000. I collected it and took the money. I then went on *collecting still more,* and on the twenty-ninth day of September, 1886, I paid myself $5,000 more, so that *nearly all* of the $15,000 that I *took in payment I collected* myself.

"Q. From the Department?

"A. *From the Department.* There were deposited in Carson & McCartney's bank, on account of the collections on this specific lot of claims on which I made an assignment to Mr. Baker, at—$128,000.

"Q. Who deposited them?

"A. Mr. Baker and myself, both.

"Q. How much did you deposit?

"A. I could not say. *I deposited over $30,000.*"

Harry O. Wilson, a witness produced *on the part of the complainant,* stated that he is the bookkeeper for Corson & Macartney, bankers. Upon cross-examination (page 160) he was asked, "How much money was deposited to Mr. Baker's credit in that account from September 7th to October 1st, 1886, both inclusive?" After examining the books he replied, "$17,976.57 I make it."

Compare the above with Exhibit H. M. B., No. 3, page 174, and with Mr. Baker's testimony on pages 94 and 95, as follows :—

"The next day, which was the seventh day of September, 1886, I left the city, and was gone until the first day of October of the same year. These cases were then in process of payment, and I left with him a schedule upon which was entered the names of several claimants, the allowance made to each, the fee to be received from each, remittance to be sent to him and a blank to fill in the date of such remittance, the amount of each check sent, the number of the check, and the date of the check, which paper remained in the possession of the complainant from September 7th until October 1st. * * * These sheets show that during my absence the complainant settled thirteen cases which are shown upon these sheets *in his handwriting* and marked on the right-hand side with a blue pencil. These were the cases: Lawrence P. Remur, $63; J. A. Riopelle, $5,452.36; Frank Hesse, $732.03; Joseph H. Riggs, $53; R. A. Bensell, $344; Stephen Sharpe, $1,560.04; James E. Waugh, $680.89; Edwin B. Low, $47.70; Samuel Comer, $877.70; Joseph Hardy, $703.10; S. D. Mix, $1,462.70; Cornelius Bosworth, $1,723.41; and Homer W. Stryon, $4,276.64, aggregating *$17,976.57*, upon which fees were collected to the amount of *$4,494.15*. The first of these collections appears to have been made upon the ninth day of September, and the last upon the twenty-ninth day of September, 1886. There was also a seventh page of these sheets, which showed the amounts paid or to be paid other attorneys for services in these cases. These several seven sheets I file as exhibits in this case."

"(The above-mentioned papers are filed herewith and marked 'Exhibit H. M. B., No. 3'). Page 174."

The above shows that Mr. Cummings did not pay himself either a *first*, or *second*, or *third* $5,000 of fees from his collections deposited in Corson & Macartney's bank, and that the total of his deposits there in Mr. Baker's account was *not* "over $30,000." As the total deposits there to Baker's credit from September 7th to October 1st, 1886, were, according to the testimony of Cummings' witness—the bookkeeper Wilson—only $17,976.57, and as the fees in no case exceeded twenty-five per cent., the actual fees deposited by him *could not have exceeded $4,494.15.*

THE BOOKS AND PAPERS RELATIVE TO THE INSPECTOR CASES.

The complainant in his bill merely states that they "were in the manual possession of the defendant" (page 2). The defendant replied that at all times prior to the sale the complainant had "full and free access to and use of all the agreements, books, papers, records, and all other memoranda which pertained to, or in any manner had connection with, those cases" (pages 11, 12, 14, and 15).

In his testimony in chief the complainant says (page 20) that Mr. Baker "kept all of the records pertaining to them in his own desk under lock and key." Page 20, he admits he had sundry documents. On pages 37 and 38, upon cross-examination, he repeats the lock-and-key story, and was asked, "Did he keep his desk locked any more after the inspector cases were in hand than he did before?" He replied (page 38), "Not at all." Then followed this testimony:—

"Q. No difference?

"A. No, sir.

"Q. Was there any difference in his keeping his desk locked before the sale than after the sale of the inspector cases?

"A. *None at all. He always kept the desk locked, and if it was not locked I had no business to look into it.*

"Q. You are not prepared to say that the key was not taken out of the door?

"A. I don't think the key was in the door, and if it had been I had no business looking in his desk."

* * * * * * *

Page 39:

"Q. Were not the keys to those parts of his desk containing the books and papers relating to the inspector cases usually during office hours either lying on the top of the desk or hanging in some of the locks?

"A. They may have been; but if the desk was unlocked I

should consider that I had no right to go into Mr. Baker's desk and overhaul his papers."

If he would not touch the papers in Baker's desk, why need he complain whether the desk was locked or not?

* * * * * * *

"Q. Were not the schedules of payment made by (to) inspectors kept in the open part of the safe owned by you, and to which at all times you had access?

"A. The schedule of some of the payments were, but whether all I do not know."

Page 40:

"Q. They might all have been there, for what you know?

"A. They might. * * *

"Q. * * * Were not the schedules of payments made in the inspector cases kept in the open part of the safe? * * *

"A. Mr. Baker had a certain portion of the open parts of the safe and I had the same. What he had in the open parts of his I don't know. *I presume that he had the schedules there.*

"Q. Don't you know that these schedules were in the open parts of the safe?

"A. I don't know. They might have been.

"Q. Did you ever see any of them there?

"A. I have seen papers that I supposed were schedules in there. The amount I don't know.

"Q. Was there ever any attempt on the part of Mr. Baker to prevent your knowing all about those cases according to your own sweet will prior to the date you sold your interest in them as per your receipt dated September 6th, 1886? If so, give particulars.

"A. Mr. Baker *was always ready to answer in regard to any specific case that I might ask him*, as when he handed me the big bundle of powers of attorney, somewheres *about the middle or the latter part of August*, to examine into it, he said, '*You can look them over and see what you think of them, and if there is any case you don't understand I will explain it to you.*'

"Q. You didn't understand my question. Were you ever

denied any information concerning these claims by the defendant prior to that date? If so, state how and when.

"A. He never denied me any information in any specific case. * * *

On page 41, the complainant, in reply to a question, said: "* * * *I probably knew, if not as much as Mr. Baker, I knew enough to be posted in regard to these claims, but as to the condition of each claim I knew nothing.* * * *"

As he had just before testified that "Mr. Baker was always ready to answer in regard to any specific case that I might ask him," what has become of his grievance?

On pages 44 and 45 he admits that he had certain books and papers which he kept for "about a week" prior to the sale, and then he was asked, "What books and papers mentioned in the pages 16 and 17 of the printed record (answer to bill, paragraphs 9 and 10) that you didn't get?" He replied, "I never received any list of cases then pending in the Treasury Department except the list of cases that he called 'hung-up cases' or 'doubtful cases' or 'suspended cases.'"

If this answer is correct is it not strange that he did not ask for it, as from the list of "pending cases" nearly all the then probable fees must come? He nowhere claims that he did ask for it or even mention that he did not have it until his testimony is taken.

But did he have it? Let us see.

On page 46 the complainant was questioned in regard to what record was made of the inspector cases as they came into the office and were filed, and he denied all knowledge of them, and was then asked, "You never kept a book of them at all?" He replied, "*Except as Mr. Baker kept them on a sheet of paper in his own possession; but in book form I have never seen them.*"

Then followed this testimony:—

"Q. Did you ever have those sheets of paper that you have mentioned as the way in which they were kept by Mr. Baker?

"A. I may have seen some of them, but never to examine them except for some individual case when Mr. Baker would ask my assistance.

"Q. You went all over the papers and books that Mr. Baker had given you while they were in your possession, didn't you?

"A. I did not."

A reference to the *original* of Exhibit H. M. B. No. 7 (page 184) will show that it consists of sheets of paper of letter size fastened together. The complainant therefore admits that he had it and had consulted it. But if he had not made this inadvertent admission, how could he know he did not have it if he did not go over all the books and papers he had?

Again, page 48, he was asked, "Did you ever ask him, prior to his purchase from you, for any books or papers or any information which would enable you to ascertain their then value?" He replied, "*I never did*, for I never conceived that there was any possible use in it, as he knew the standing." The next question was, "Consequently, then, he never refused to give you any books or papers. Am I right?" And the reply was, "*I think you are right.*"

On page 93 Mr. Baker states the papers Mr. Cummings took to his house before the sale. Mr. Cummings has freely admitted the possession of all of them except the list of "pending cases," and it has been shown conclusively by his own testimony *ante* that he did have that list in sheets as it was kept, as is proved by the exhibit itself.

On page 99 Mr. Baker makes answer to the whole charge of secreting papers or keeping them "under lock and key" as follows:—

"Q. The complainant says in his testimony that you kept the books and papers of the inspector cases under lock and key and that he did not have access to them. What have you to say in regard to that?

"A. The statement is not true. *It has always been my*

custom at night to close and lock my desk. These papers were undoubtedly locked up at night. During the day they were not usually locked, and if they were locked the keys were in that portion of my desk which was *always unlocked, and I never carried them in my pocket.* They always remained on the desk or in unlocked portions of the desk. *There never was a time when the complainant could not have access to those papers at his own volition. When I left the city I always left the keys of that portion of my desk where these papers were.* Those relating to the settled accounts were contained in the safe, which was entirely his, and in a part of the safe which was open and to which he had access at all times. He knew where they were, and he never suggested that he wanted to see any of these papers at any time— that he did not see them. There was no attempt made to secrete them or withhold them from him."

And on pages 108 and 109 he testified as follows:—

"Q. The complainant has said in his testimony that he had no business to look into your desk, even when unlocked. Do you know of his examining matters in your desk during your copartnership?

"A. During that time the usual relations in regard to papers pertaining to a firm which I suppose exist between partners existed between us. I have frequently seen him pick up papers at my desk and go to my desk for papers, to which I never objected, and which I did not suppose was dishonorable on his part.

"Q. Do you know whether or not there was a more appropriate or better place for keeping these papers than the place in which you did keep them?

"A. There was no other place in the office in which they could be appropriately kept.

"Q. Did you ordinarily leave with him when you left the city the keys to that part of your desk where these papers were kept?

"A. I did.

"Q. Did he, prior to 1889, complain to you that he did not have access to these papers?

"A. *He never did.*"

And on page 111 as follows:—

"Q. I wish to recur once more to the sale by the complainant of his interest in the inspector cases to you. Please state whether or not there was, just before or at the time of the same, any fact, any paper or papers or documents that were within your knowledge, touching those cases, from the beginning up to the time of the sale, that the complainant was not aware of.

"A. No paper whatever of any importance in the determination of the value of the cases which he was proposing to sell."

On page 197 appears a letter written by Mr. Baker in August, 1889, in reply to the "Thoughts in Mind," in which he there very emphatically asserted that Mr. Cummings had all the papers relating to the cases in question. At that time Mr. Cummings did not deny it.

AS TO THE SCHEDULES OF PAYMENTS IN 1886, EXHIBIT H. M. B. No. 3, PAGE 174.

On page 21, Mr. Cummings states that he never saw those schedules until after he had sold the inspector cases to Mr. Baker, September 6th, 1866 (page 55), yet on page 34 he testified on cross-examination that he "had no reason to be dissatisfied with the sale to Mr. Baker until the Summer of 1888." And on page 41 he said, "I probably knew, if not as much as Mr. Baker, I knew enough to be posted in regard to these claims."

On page 94, Mr. Baker testified that "the next day (after the sale), which was the seventh day of September, 1886, I left the city and was gone until the first day of October of the same year. These cases were then in process of payment, and I left with him a schedule (H. M. B. No. 3, page 174), upon which was entered the names of (the) several claimants, the allowance made to each, *the fee to be received from each*, remittance to be sent to him, and a blank to fill in the date of such remittance, the amount of each check sent, the num-

ber of the check, and the date of the check, which paper remained in the possession of the complainant from September 7th until October 1st. If I had told him there were only $20,000 in fees in these cases all that he would have had to do to have proved that I had misstated the case would be to have added up six columns of letter page size as shown in the exhibits. I have no doubt he did so add them up, as his testimony indicates. (See page 23.) If so, he must have known before my return, if his testimony is true, just exactly what he claims he did not know."

If Mr. Baker told him there were only about $20,000 of fees from the cases appropriated for in 1886, he was not only guilty of wrong-doing, but was foolish enough to immediately put into the hands of the party he had wronged the positive evidence of it, and leave him in the sole possession of it for three weeks. On the other hand, if Mr. Baker never did tell the complainant that the said fees were only about $20,000, as he testified (page 97), his conduct was natural and just such as would have been expected of an honest man. But if the complainant's testimony is true he is guilty of very peculiar conduct for any one defrauded as he alleges he was. It will not do for him to claim that he did not know, for in his own voluntary direct testimony (page 23) he says, "The amount of the claims that had been adjudicated and which were in the process of collection *I discovered of course within a day or two* after Mr. Baker had delivered me the schedules * * * *and it was hard for me to reconcile the amount of fees that he said and the amount of fees that were on the schedule.*"

Under cross-examination of Mr. Baker he was asked and testified as follows (p. 120):—

"Q. I hand you now a paper marked 'H. M. B. No. 3,' and ask you to state what that paper is?

"A. That paper contains a list of the parties for appropriations made in the year 1886, according to the documents 70 and 225, which were in the attorneyship of Cummings &

Baker, showing the name of each client, the amount allowed him, the fee according to the fee agreement, the amount which should be remitted to him, the date when it was remitted, the amount remitted, the number of the check by which it was remitted, the date of the check and also another sheet which shows, in part at least, the amount paid to other attorneys for assistance in these cases.

"Q. Now, Mr. Baker, would anybody investigating that subject with these papers in his possession have any occasion to look at the documents which you have just been testifying about?

"A. Not if he were satisfied of the accuracy of the other paper.

"Q. In other words, does not this paper about which I am now questioning you contain all the cases of Cummings & Baker that are mingled with all other cases in these public documents?

"A. That paper is supposed to contain them.

"Q. Will you state whether it does or not?

"A. So far as I know, it does accurately.

"Q. Then if this paper had been handed to Mr. Cummings there would have been no need for checking off anything in the other book, would there?

"A. Not except by way of comparison.

"Q. He could have gotten no further information from the Congressional documents in respect of the matters that you were negotiating for than is contained in this paper?

"A. I presume not.

"Q. Why, then, did you not hand him this paper?

"A. *Because I think it was not in existence at that time.*

"Q. When was it prepared?

"A. It was prepared just about the time the drafts began to be issued. It was after the appropriation was made which was directed by documents numbered 70 and 225.

"Q. Have you not already testified that you handed him this very paper the day after the transaction?

"A. Yes; but I was *talking about the time he took the books and papers to his house. These other sheets were lying on my desk, day in and day out, and he saw them.* (The earliest date on Exhibit H. M. B. No. 3 is August 30th, 1886.)

"Q. They were lying on your desk, day in and day out, when?

"A. After the books and papers which I have testified were taken to his house, and then this paper was in use, as the cases were being settled and daily entries were made in it during that time according to their several dates, of which Mr. Cummings had full knowledge in every respect.

"Q. I shall have to be a little more direct. Will you state whether or not this paper was in existence on the sixth day of September, 1886, when this transaction was made?

"A. It was.

"Q. Then when he was asking you for information upon the subject, such as justified you in handing him these public documents to advise himself as to the state of the matter, why was it that you did not hand him this paper?

"A. As I have said before, at that time *I am not certain that that* paper was in existence?

"Q. You are not certain that this paper was in existence on the sixth day of September, 1886?

"A. *I am; but he took the books and papers to his house some three weeks prior to that, at least.*

"Q. But before you consummated that trade with him did you or did you not have this paper?

"A. I did.

"Q. Was he not, up to the very point of accepting your check, still considering whether he would accept it or not?

"A. I do not know. You can ask him about that.

"Q. What took place on the morning of the day when the transaction was consummated?

"A. He came into the office and said he had been thinking it over, and if I thought it was best for him he would take $15,000. I said, I have no advice to give you; *that is more than I think I ought to pay you, but to end the matter I will do it.* He then said he would take the check.

"Q. Where was this paper when that conversation took place?

"A. It was in the office.

"Q. Had you ever handed it to him?

"A. *I am very confident I had.* I cannot say positively.

"Q. Why, Mr. Baker, you have sworn you did not show it to him until the next day.

"A. *I have not.* I have sworn *that I did show it to him the next day,* but not that I did not show it to him before that time. This paper was in use, as the entries on it will show,* for several days prior to that time. *It was there in*

the office, open to his inspection as it was to mine, only that I made the entries in it and he did not. That is all there is of it When that paper was prepared—the exact date—I cannot tell, but it was prepared prior to any date there is on it, whatever that may be.

"Q. Will you please state now whether you are prepared to say that you ever handed that paper to Mr. Cummings or called his attention to it prior to the seventh day of September, 1886?

"A. *I have no doubt on that point whatever.* What transpired as to any individual paper in the office on any given date I cannot tell you, *but I have not a particle of doubt but that Mr. Cummings prepared that first page of entries*† with me from the documents, and that was prepared prior to any date therein of the remittance of a check."

MR. CLAUGHTON:—I want to put on the record an objection to the witness persisting in giving his doubts and opinions in answer to my questions as to facts.

MR. JOHNSON:—The witness has promptly, fully, and explicitly answered your questions, as the record will show.

MR. CLAUGHTON:—You have nothing to do with this witness now.

MR. JOHNSON:—I have the right to make any objection now, and have the right to put it upon the record.

MR. CLAUGHTON:—I have tried my best to get the witness to answer the questions.

MR. JOHNSON:—I say that his answers are full and complete, and that is the reason you object to them.

MR. CLAUGHTON:—That is an impertinent interference on your part. I am examining this witness in the performance of my professional duty.

MR. JOHNSON:—And I am here also in that capacity, and I want the court to know that I am here.

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* The first entry is August 30th, 1886, page 174.

† The first page of entries refers to the fact that the statement was on a double sheet. The first page of it included the "Name, Allowance Fee, and Remittance."

MR. CLAUGHTON:—When I ask you a question again, I request you to make an answer and not a speech.

"Q. Are you prepared to say that before the assignment of the inspector cases was made to you by Mr. Cummings you placed in his hands or called his attention in any way to this document about which I am now examining you, H. M. B. No. 3?

"A. *In my own mind I have no doubt I did so do.*

"Q. Do you recollect that you did so do?

"A. *I have no doubt that I did it. I do not remember.*

"Q. Do you recollect that you did so do?

"A. *I have no doubt of it.*

"Q. Do you recollect that you did so do?

"A. *I do not remember the day or the hour, but I have no doubt of it.*

"Q. Why have you no doubt of it?

"A. *Simply because it was in the natural order of things. I had nothing to conceal and attempted to conceal nothing.*

"Q. Mr. Baker, you have in your testimony distinctly sworn that you put this paper in his hands the next day, when you were about going from the city, and at that time he had the paper which, if he had had any judgment or discretion, would have given him the information in respect to these fees. Now, with this testimony before you, are you prepared to say that you have no doubt the paper was placed in his hands before the transaction was made?

"A. I did not use the language of the question in my testimony, *but I repeat my answer just given.*

"(And thereupon counsel for the complainant read from the testimony in chief of this witness on printed page 94 relative to the matter just inquired into.)

"By MR. CLAUGHTON:

"Q. You will now observe from your testimony that you left it with him on the 7th, and from that paper, during your absence, he could have ascertained all about the amount of these claims that had been appropriated for at the time of the settlement. With your attention called to that testimony, are you prepared to say that this paper which you have testified you gave to him on the 7th had been submitted to him prior to that time?

"A. *I testify exactly as heretofore.*

"Q. Then you decline to answer that question?

"A. *I do not.*

"Q. Will you please answer it?

"A. *I have answered it.*

"Q. You will observe from your testimony that you left that with him on the 7th, and from that paper, during your absence, he could have ascertained all about the amount of these claims that had been appropriated for at the time of the settlement. With your attention called to that testimony, are you prepared to say that this paper which you have testified you gave him on the 7th had been submitted to him prior to that time?

"A. *I have no doubt of it.* I stated in my testimony in chief the 7th, because that was a specific date upon which I knew that I had done a given thing, for the reasons and circumstances there given, and that it remained in his possession until such another given date for the reasons and circumstances there given, and that it was in his possession on the intermediate date for the reasons there given and from the entries on the paper itself.

"Q. Have you any recollection that this paper was in his possession prior to these dates?

"A. My remembrance is that I compared that paper with him from documents 70 and 225. That was not an unusual occurrence in the matters of the firm. That I did compare this identical paper with him, I cannot swear definitely and positively, because it was so long ago, and as it was not an unusual occurrence I did not charge my mind with it and cannot tell you, but I have no doubt individually upon that subject.

"Q. If this paper was handed to him or shown to him prior to the transaction—I mean the assignment—what necessity would there have been for you to hand him the printed documents with the checks which you say were upon them when handed to him?

"A. He did not have that paper to take to his residence. I do not know whether it was in existence at the time he took the books and papers to his residence; but even had it been in existence and had it been given to him it would have been appropriate to have given him the documents, that he might have checked that paper off with the documents.

"Q. For what purpose?

"A. To see that it was correctly done.

"Q. The purpose of the documents with the checks upon it was to see which of these cases belong to Cummings & Baker?

"A. Yes, sir; and also for the purpose of showing the cases in which Cummings & Baker had less than the ordinary fee.

"Q. Do the printed documents show which of the Cummings & Baker cases had less than the ordinary fees?

"A. Not without the marks, but with the marks it does.

"Q. How do the marks affect that?

"A. It is shown by blue-pencil marks as I had it taken from the fee agreements.

"Q. You mean to say that the blue-pencil marks indicated the cases in which the fees were less than twenty-five per cent.?

"A. Yes, sir.

"Q. And that same information is in this paper?

"A. It is, by calculation. I do not know whether it is marked on the margin or otherwise. I do not remember about that now. Of course a calculation would show.

"Q. Sometimes it was marked on the paper?

"A. Yes.

"Q. Then this paper that you say that you handed to him on the 7th is really, in respect to the names and the amount of fees in each respective case, a mere copy of the books with the checks on the books?

"A. It was intended to be.

"Q. Is it?

"A. I presume it is. So far as I know, it is.

"Q. Is there anything else on it that is not on the book with these checks?

"A. Nothing except the entries as to the date of the remittance, the amount of the remittance, the number of the check, the date of the check, and the additional sheets showing the amounts due to other attorneys.

"Q. Then the public documents do not show the amount of the checks?

"A. Yes; they show that amount of the checks, unless there is some mistake in printing. Otherwise the documents would show exactly the same as the amount of the checks.

"Q. Then, if I understand you correctly, the only differ-

ence between these public documents* and this paper is that this paper is an extract from the public documents as to the Cummings & Baker matters, while the public documents have other matters besides the Cummings & Baker cases?

"A. Yes.

"Q. That is all?

"A. Yes.

"Q. How long before the first entry on this paper was made was it prepared?

"A. I could not tell you.

"Q. Can you approximate it?

"A. I always intended to have a paper similar to that prepared in readiness for the first issue of drafts. It may have been done the night before or it may have been done two or three days before. Ordinarily it was only a short time before.

"Q. To what first issue do you allude?

"A. The issue of the first draft by the Treasury Department in payment of the claims.

"Q. You think it was prepared how long before that?

"A. It might have been the day before or it might have been a week before. I do not know about that. It was ordinarily just before I expected the Treasury Department would issue some drafts in payment.

"Q. Would you not naturally prepare such a paper very soon after Congress made the appropriation?

"A. No; not necessarily.

"Q. My question was ordinarily.

"A. Ordinarily it would be done in season for the use for which it was intended and not much before.

"Q. Do you remember at what time this appropriation was made?

"A. The statutes will show. I do not remember the date.

"Q. Now I will ask you a few questions about the conduct of these negotiations. You have testified that you acted fairly and squarely with Mr. Cummings in the matter of trade. Is that what you do testify to?

"A. Yes, sir; I am willing to testify to that.

"Q. Do you think you dealt as fairly with him as you

* Cummings admits (page 149) that he had those public documents Nos. 70 and 225 before the passage of the appropriation bill (August 4, 1886), and on page 140 that with them he could have made Exhibit H. M. B. No. 3.

would have done with anybody else with whom you were making a trade?

"A. Yes, sir.

"Q. You intended to give him all of the facts from which an intelligent gentleman would be able to come to a conclusion as to whether or not the trade was to his advantage?

"A. I intended he should have that, and think he did. He was not in ignorance on the subject.

"Q. If I understand you correctly, you did not think it was incumbent upon you to give him any advice?

"A. I declined to give him advice.

"Q. You did not think it was incumbent upon you to do anything more than to place in his possession such facts as would give him the means of investigating and deciding upon his own judgment whether or not the assignment should be made?

"A. That was what he had. *He had everything, so far as I know, upon which I should have acted to have made the calculation*, which I suppose he did.

"Q. You regarded it as a matter of trade, in which it was the business of each man to look after his own interests?

"A. Unquestionably; just as in every other trade.

"Q. Do you know whether he ever received anything from the H. D. Cooke matter?

"A. I do not.

"Q. He never reported to you that he had received anything?

"A. He never did. I knew that he had funds belonging to the assigned bank, but whether he ever devoted any of them to his own uses I do not know.

"Q. In reference to this document marked 'H. M. B. No. 7,' is this one of the papers that you handed to Mr. Cummings to advise him of the condition of the business?

"A. Yes; but I think possibly these blank sheets have been put on this as a kind of a cover to this paper.

"Q. What does that paper show?

"A. This paper shows the name of the client and, in general, the period for which arrears of salary were claimed for the client. For instance, here is the first name, Harry J. Ashmore, Burlington, N. J., from August 1st, 1875, to November 30th, 1875. Burlington, N. J., represented his place of service, and the dates represented the period of the service for which the claim was made.

"Q. Does that show how much was due to him?

"A. No; this does not. His salary, ordinarily, was taken from the Treasury registers, and the difference between that salary and the legal salary, as specified in the statutes, would be the amount due.

"Q. Then, in order to make this paper of any assistance to Mr. Cummings, it would be necessary for him to search the Treasury records?

"A. No, sir; I said the Treasury registers.

"Q. That is a record, is it not?

"A. It is a public document, the same as the Blue Book.

"Q. You may change it to Treasury register and then answer the question.

"A. It was one of the links necessary to complete the computation.

"Q. Had you in your possession anything that supplied that link?

"A. I had not, unless a case had been adjudicated, as shown in documents 70 and 225.

"Q. Then all of these cases in document H. M. B. No. 7 that had been adjudicated are reported in printed documents as adjudicated cases?

"A. Yes; from time to time.

"Q. Only a portion of the names in printed documents 70 and 225 will be found in Exhibit No. 7. For the plaintiff to have been advised what was due to these various claimants he would have had to make a search somewhere else to ascertain those facts?

"A. If I had been intending to make a proper computation I should have checked off the names in documents No. 70 and No. 225 so far as contained in them; then the other cases would require a computation for the purpose of ascertaining the difference between the amount it was shown by the Treasury register they received and three dollars a day, to which they were entitled.

"Q. And in respect to those cases you had no other information than these papers and these documents give?

"A. *Those were all the records I had.*

"Q. You had no other information?

"A. *No, sir; no other information.*

"Q. Your familiarity with the cases did not give you any additional information?

"A. No, sir; they were filed in that way. When they were

passing the accounting officer I then went over the figures in the case as they were made in the departments and verified each case as it was being passed, and if the allowance was not made for the whole time, or if it was made at different rates from those that I thought it should be made for, I made an investigation in the case as it went along. In that way, with a few exceptions, the amounts found due by the accounting officers of the Treasury were accurate and correct and satisfactory to myself as attorney.

"Q. Can you look at this paper handed to him on the seventh day of September, and from your examination of that can you tell what amount has already been appropriated for and the fees belonging to Cummings & Baker in those cases?

"A. Not from paper No. 7 alone, but from paper No. 7 and documents Nos. 70 and 225 and the Treasury registers and fee agreements, a list of which was given to him, of the cases where, so far as my examination showed, the fees were less than twenty-five per cent.——

"Q. I am talking about this paper only.

"A. From these papers it could easily be done.

"Q. Please look at Exhibit H. M. B. No. 3. You have testified, I believe, that from this paper, by adding up certain columns, he could have advised himself as to exactly the amount of the claims that had already been appropriated for on the sixth day of September, 1886?

"A. I see they are added up here. They are my figures, and I presume they are right.

"Q. Are those your figures?

"A. I think they are my figures.

"Q. What do they add up?

"A. One page foots up $2,351.46; another, $6,342.16; another, $5,325.65; another, $7,570.79; another, $5,594.78; and another, $5,792.67.

"Q. What do they aggregate?

"A. $32,977.51.

"Q. Can you tell from that statement how much was due to other attorneys?

"A. These sheets show. (Sheet No. 7.)

"Q. I want you, Mr. Baker, if you can, to state it, and I want to get it in the record from your testimony.

"A. I cannot give it in any way except from this sheet—$1,488.81.

"Q. That left due, then, to Cummings & Baker how much?

"A. $31,488.70; but that does not cover any of the other expenses of the firm, which were large in a great many directions.

"Q. I am talking about the fees now.

"A. After the trade the expenses relating to these cases were paid by myself individually.

"Q. It now appears from this paper that $31,488.70 was the amount of the fees. What proportion of that had already been collected by you?

"A. When?

"Q. At the time of the trade.

"A. I do not know.

"Q. Is there any way by which you can ascertain that?

"A. The receipts would show by their dates.

"Q. What had not been collected by you were in the shape of issued drafts, ready to be delivered upon the presentation of the power of attorney, as I understand it. Is that so?

"A. That is so."

This cross-examination shows that the exhibit H. M. B. No. 3 must have been prepared as early as August 30th, 1886; that it was not prepared about the "middle of August," when Mr. Cummings took the other papers to his house; that Mr. Baker prepared it, and that he thinks he compared it with the complainant; that that exhibit was in use for several days before the sale, and that the complainant could have seen it and probably did, and that the defendant called the complainant's attention to it before the sale. The defendant repeatedly said he had no doubt he did so.

In his testimony *in rebuttal* the complainant says (page 132) that he never had in his possession prior to the 6th of September, 1886, Executive Documents Nos. 70 and 225 with check marks denoting which of the cases reported therein were Cummings & Baker cases, and that he never saw Exhibit H. M. B. No. 3 prior to the evening of September 6th, 1886.

But upon cross-examination he admits (page 149) that he had the executive documents. He testified as follows :—

"Q. At the last session you referred to your collection of executive documents No. 70–225 in evidence. Did you generally get this soon after they were printed?

"A. I did.

"Q. Did you get No. 70–225 before the deficiency bill of 1886 became a law?

"A. That I cannot say; *but I think I had it in my possession probably before the appropriation bill passed.*"

And on pages 139 and 140 he says he could have prepared schedules like H. M. B. No. 3. His testimony is as follows :—

"Q. Mr. Cummings, you have stated that Exhibit H. M. B. No. 3, in answer to a question by Mr. Claughton, was in your possession, and that you paid no attention to it and put it aside. You did not take enough interest in it to go over it and see what it was?

"A. The transaction was closed, as I supposed.

"Q. Well, you had that paper and other papers and these bank checks and bank book in your possession how long?

"A. Well, I think from about the morning of the 7th of September, 1886, to about the 1st of October, 1886.

"Q. And you put this paper away and did not pay any attention to it, did not treat it with any degree of importance, that it would carry any information on the subject at all, did you not?

"A. I did.

"Q. When did you first look at that paper?

"A. *I first looked at the paper near or probably the same day, or the next day, or at the day it was that the first letter came in containing a power of attorney to indorse the draft.*

"Q. *Then you knew what the paper was, I suppose?*

"A. *Yes, sir.*

"Q. Can you tell from your recollection what was the purpose of the paper?

"A. I can only tell now because I have seen it. I think now it was the usual paper that Mr. Baker prepared, and I would say that whenever the House of Representatives passed

the appropriation bill providing for the payment of these claims, and it became certain in our idea that the appropriation would be made, Mr. Baker would sit down and make up these schedules, and those schedules were generally made by the time the bill became a law.

"Q. *It was just such a paper that, under all the circumstances, you could have made yourself, couldn't you, if one had to be made?*

"A. *Why, certainly.*"

As he had by his own admission a list of the cases where the fees were less than twenty-five per cent. (page 44) and the Executive Documents Nos. 70 and 225 before the appropriation bill passed (which was August 4th, 1886—more than a month before the sale of September 6th, 1886) (page 149), and says (pages 139 and 140) that he certainly could have prepared a schedule like Exhibit H. M. B. No. 3, how was he deprived of any essential information even upon his own statement?

COMPENSATION FOR SERVICES IN THE INSPECTOR CASES CLAIMED BY CUMMINGS AFTER THE SALE OF SEPTEMBER 6TH, 1886.

On page 56 of the record, Mr. Cummings states the nature and amount of his services in securing the possession of sundry drafts issued in the inspector cases.

Then, page 57, follows this testimony: —

"Q. Did your service go so far in that way as for you to name any price for your services?

"A. I do not recollect, but I am inclined to think that, following out his admission that I was entitled to a compensation for the services that I had performed, and also the fact that before that one claimant, as it were, got away from him or tried to get away from him and get the draft himself, that Mr. Baker offered me $300 if I would secure that draft and not have it go to the claimant. I think I put a sort of

an estimate on the value of those services, but what it is now I cannot say.

"Q. What is your best judgment about it as to the price you named?

"A. I cannot remember, because it was a percentage, and what that was I cannot say."

The testimony was continued on pages 60 and 61, as follows:—

"Q. You found out enough in the fall of 1888, and not before, to satisfy you that you had been overreached?

"A. I did, sir.

"Q. How did you ascertain that fact?

"A. When I found that $73,000, $61,000, and $110,000 were appropriated to pay the claims of inspectors of customs, and I recognized in the Congressional estimates that the very largest part, probably nine-tenths, of all the claims were claims that we were the attorneys in.

"Q. Learning those facts through that channel, and having those facts in your possession, why did you undertake to collect the draft for Mr. Baker for a compensation?

"A. I never offered to do it for a compensation and never did do it for a compensation, and I never received any compensation.

"Q. That may be, but I understood you to say that you had made an estimate—which you cannot now state—what your services were worth in obtaining these drafts for Mr. Baker by reason of a conference with the Assistant Secretary of the Treasury.

"A. I will tell you. When Mr. Baker denied that I had done anything of any consequence in the collection of these claims I pointed to those three instances where I had helped to secure the drafts instead of having them go to the claimants, and Mr. Baker had prior to that presented a claim to me in which he claimed that I owed him $2,700, and, taking Mr. Baker, for argument sake, on his own ground, that I claimed that at a very moderate, almost infinitesimal percentage, that my services for collecting those drafts was far more than his claim against me.

"Q. Then you proposed to settle it in that way?

"A. I did not propose to settle it in that way.

"Q. Mr. Cummings, what I want to know is this: Having your feelings aroused to the fact that you had been greatly injured—that you had been cheated by a partner in a business transaction, knowing that fact, yet, without adopting some process to correct that fraud, you, nevertheless, at the instance of Mr. Baker and for his especial benefit, applied to the Assistant Secretary of the Treasury and performed certain services in obtaining those drafts for him, for which you placed an estimated fee upon it?

"A. I placed no estimated fee upon that service at the time it was done. The estimate that I placed on that service was nearly a year after that, and it arose out of a correspondence between Mr. Baker and myself. I had never any idea of charging Mr. Baker anything for my services for the first two lots—that is, the appropriation of February and of March, 1888.*

"Q. Then, with the full knowledge of the fraud practiced upon you in 1888, you waited a year longer with that information, and probably with additional information, without filing a bill to set aside the conveyance, but in the meantime set an estimated value upon your services for aiding Mr. Baker in obtaining the draft. How do you reconcile that?

"A. I never set any value upon my services in the draft matter except as it was drawn out in correspondence between us.

"Q. Then you did state a price; am I right?

"A. I set an estimate as compared to what Mr. Baker said his claim was against me, but there is no estimate set by me in any shape, form, or manner *in any way to indicate that I believed at any time that I had any interest in the cases that had been* collected since 1886—that is, in fixing a fee for obtaining the drafts."

And on pages 67 and 68 as follows:—

"Q. Mr. Cummings, referring again to the service you rendered Mr. Baker in obtaining the drafts of the Treasury Department in the inspector cases for him, do you recollect of making a claim for your services in obtaining those drafts for the sum of $3,000?

* There were only $6,920.16 of fees received *after* 1888. (See Auditor's report, page 226.)

"A. I never made any such claim, and I wish to state, in explanation of my answer, that Mr. Baker had presented a claim to me for $2,700, and I, in reply, referred to these services in obtaining the drafts, and my conclusion was that I did not owe him anything of the $2,700, because, making allowance even for obtaining these drafts, *I am entitled to more than $2,700; but I made no claim for it.*

"Q. Do you recollect the amount of the drafts that you got through for him?

"A. The favorable action that I asked for and which was granted by the Treasury Department covered drafts amounting, I should say, to about $240,000. I may be mistaken in the amount, because I don't know the amount of drafts that Mr. Baker received, but it covered whatever drafts there were in the three appropriations of 1888.

"Q. You knew at that time the amount, didn't you?

"A. I did not, and I do not know now.

"Q. What did you ask the Secretary to do, then? How did you bring the matter before him?

"A. I explained that more fully in my testimony of last Monday.

"Q. Did you inform the Secretary as to the amount of the drafts that were to go through and the number of drafts that were to be paid?

"A. I did not, because I did not know. I showed him the schedules as shown in the executive documents and told him that we controlled a large number of those cases, and I did not know how many drafts that Mr. Baker received.

"Q. But what the amount of the drafts aggregated you knew, did you not, from papers you had in your hands then?

"A. No, sir; I had nothing in my hands showing the amount of drafts in which Mr. Baker was interested. I had in my hands the documents showing the amounts of drafts covered by these appropriations, but how many Mr. Baker had I do not know.

"Q. You did not care, either, did you?

"A. I did not care.

"Q. I believe you gave the date when you applied to the Secretary in the matter of the drafts, did you?

"A. No; I did not, because I could not give it.

"Q. Can you state the year or the month when you applied to the Secretary to have those drafts delivered to Mr. Baker?

"A. I should say it was in March, in the first appropria-

tion—March, 1888. In the second appropriation it was in April, and in the third appropriation it was the latter part of October of 1888.

"Q. Mr. Cummings, do you know the fact that the drafts were delivered to Mr. Baker?

"A. I do.

* * * * * * *

"Q. Mr. Cummings, in your settlement of your personal matters with Mr. Baker, did he not offer to allow you anything for your services rendered in assisting him in getting these drafts delivered to him?

"A. Not at that time, but in correspondence afterwards, when, in speaking of what aid I had given in these cases, Mr. Baker *did acknowledge* these services, and he said that he *was ready to make ample* compensation for them, but he never named any sum.

"Q. Did he say that he thought the sum of $500 would be ample compensation for the services rendered?

"A. He might have done so; I do not know whether he did or not, but I think likely that he did."

In Exhibit H. S. C. No. 6, page 83, in a letter addressed to Mr. Baker by Mr. Cummings under date of October 2d, 1889, occurs the following:—

"*I ask you also to state what you deem a reasonable fee for my services in the power-of-attorney matter. My estimate is one per cent. on the claims, which is more than reasonable when your fee or the main fee was 25 per cent. of the face of the claims, and I estimate that you collected some $280,000 in 1886.*"

Mr. Baker, in his testimony, pages 97 and 98, states the matter of the drafts as follows:—

"Q. State, if you please, what was the practice of the Department prior to that time, as well as afterwards, as to the delivery of drafts.

"A. The practice of the Department had been from the foundation of the Government, so far as I have been able to learn, up to about 1885, to deliver the drafts made out to the order of the claimant to the claimant's attorney who

represented the case. About that time a new order was issued by the Treasury Department saying that the draft would be issued directly to the claimant. This was prior to the settlement of these cases, in August and September of 1886. As we had always managed the drafts and secured a special power of attorney to indorse each and take out our fees as per contract and remit the balance, that being vastly the easier way, we preferred so to do. The case was represented to the Treasury Department, and finally an order was issued permitting the Treasurer of the United States to withhold in his possession the drafts and to give a description of them necessary to be put into the special power of attorney to secure the indorsement and then to deliver the draft to me upon the presentation of that special power of attorney. That was done with reference to this entire batch of cases, with the exception of one or two where there was a disputed attorneyship or where the claimant had requested that the draft be sent direct to him. This was not a favor especially granted to Cummings & Baker, but was done also for other attorneys practicing before the Department. That order was obtained *before the sale*, and set a precedent for such orders in future."

And further on pages 109 and 110 as follows:—

"Q. The complainant also refers to his services in your behalf in getting from the Treasury drafts issued in payment of the so-called inspector cases. Please state the facts in regard to this, and whether or not a similar arrangement had been made prior to the sale of September 6th, 1886, and whether what he claims to have accomplished for you was done by the Secretary of the Treasury for other attorneys.

"A. The same rule applies to drafts issued prior to the sale of 1886 as subsequently, with some unimportant modifications. The precedent was established in connection with the drafts of 1886, and the same rule was applicable to many other attorneys. Subsequently the arragement was only to continue that order to drafts issued later. I asked the complainant on a few occasions to see the Assistant Secretary of the Treasury, Mr. Maynard, who had charge of these matters, for the reason that the complainant claimed to be on terms of especial acquaintance with him, through his connection with him in the D. K. E. Club, and that he

could approach him more readily than myself. Upon a later occasion I found no difficulty in having the arrangement continued without the services of the complainant.

"Q. Did the complainant succeed in having any drafts retained for you in any cases where the attorneyship was in dispute or where the claimant asked to have the draft sent to him?

"A. He did not.

"Q. State whether or not at any time you offered him for services—any case $300.

"A. I did not.

"Q. What have you to say in regard to his claim for pay for his services in this matter of the inspector cases?

"A. I was trying to get him to pay me a balance due, which is now in suit, aggregating some $2,700. He then, for the first time, suggested to me that he ought to have pay for his services in procuring the drafts for me. I said, 'Very well, if you think so I am ready to pay you any reasonable compensation. I unquestionably did as much for you in connection with the Cooke assignee matter, but I am making no charge for it.' I asked him what he thought it was worth, and I could get no definite response from him. I finally offered him $500, and asked him if that would be satisfactory. He refused it, and there the matter ended."

In the surrebuttal testimony (page 164) a letter from Mr. Cummings to Mr. Baker is submitted, in which he wrote as follows:—

"Mackey says you think any charge of one per cent. of claims exorbitant in the power of att'y matter. You say it took about 3 half hours. You are mistaken. It was a week before I could make an impression on him. You know how he put me off; how I took a big bundle of letters over to him to show the relations with our clients; how I went to Fairchild, refused but finally agreed to leave it to Maynard; how I went to Maynard's house. I made the cases my cases, as I honestly believed they were. One per cent. too much? Why? Why, I was offered ½ of a good fee to get a man's drafts for him that very year, and I tried it and Maynard refused it, when he said it was another attorney's case, and said what he had done was for personal reasons and not as a matter of

business. Three times I pleaded for you. How much did it cost you to get your fees in those cases where the drafts got away from you? Didn't it cost far more than one per cent. of the claim? Took but little time, did it? The value of services depends on the results and not on hours; ¾ of what you collected subsequent to '86 was on powers and contracts gotten prior to that time. All you did was to write a simple letter of renewal of claim, back it up with the stereotyped affidavit of which I wrote scores, and the work was done. Was your service any the less valuable when you took a $500 fee for a few minutes' work?

"In order to be sure, I have stated a hypothetical case like the present one of draft matters to some half dozen practicing attorneys before the departments, and not one set as low a fee as I did.

"You would not have done it so cheap if a stranger or client had asked you to do the job."

In Exhibit H. M. B. No. 12, being a letter from Mr. Baker to Mr. Cummings, under date of August 13th, 1889, there appears the following:—

"You say you went to Ass't Sec'y Maynard three times at my earnest solicitation and add, 'I think I earned a good fee for my services in the single matter of the drafts.' That you rendered such service I very gladly admit, as I do that in my absence you rendered some other brief services for me in those cases. If you will present a reasonable bill for such services I will very gladly allow it upon the settlement I have been trying for more than two years to get. Lest you may be apprehensive, I will say here and now that I have no charge against you for any services I may have rendered you during your absence or otherwise in connection with the Cooke estate."

And in the testimony before the auditor, page 230, Mr. Baker testified as follows:—

"Q. During that period (from September, 1886, to August, 1889), what services, if any, did Mr. Cummings render in connection with the inspector cases?

"A. He rendered services in the settlement by getting the

drafts cashed and making remittances to the clients in, *I think, thirteen cases during my absence in 1886.* He subsequently was occasionally asked, or offered when I was busy, to put some papers in typewriting which I had prepared, and he interviewed Assistant Secretary Maynard in connection with the delivery of some of the drafts in 1888.

"Q. That is a matter already covered in the testimony?

"A. Yes; his services were merely nominal and could have been compensated with a few dollars, if compensation had been proper or required. I may say in relation to the other cases which we had not covered by the assignment of 1886, that I brought more fees into the firm than Mr. Cummings, so that there was, on an even basis, no loss to him on account of the extra hours which I served on the inspector cases."

If the complainant "*was convinced*" *in 1888* that he had been overreached and cheated in the sale of 1886 (page 24), and again (page 153) "*was convinced*" *in the early part of the summer or late in the Spring of 1889* that he had been wronged or overreached, why did he submit, under date of October 2d, 1889 (pages 83, 164), in writing, a charge for his services in 1888, of one per cent. on the claims? It is evident that even then, a month after the Statute of Limitations had run, that he did not intend to bring the present suit.

SUBJECT INDEX.

ALABAMA CLAIMS, Court of. Pages 30, 88, 89, 134, 139, 144, 196.

BAKER brings suit at law on partnership stated account. Pages 5, 16, 17, 35, 106, 107, 195, 224, 225, 227, 248.

Compensation for services, the sale being set aside. Pages 222, 223, 227, 229, 231, 232, 233, 234, 235, 238, 239, 240–7, 261, 263.

His bank account. Pages 4, 22, 23, 59, 60, 64, 95, 118, 153–7, *158*, 159, 160, *161*, 162, 163.

His statement that $15,000 is more than he ought to pay

for the inspector cases. Pages 10, 11, 12, 94, 97, 121, 209, 213, 214.

Exhibit H. M. B. No. 3 (page 174), testimony in regard to. Pages 14, 15, 17, 21, 34, 54, 55, 94, 120, 121, 122, 123, 124, 127, 132, 139, *140*, 212, 213.

His intention to close partnership. Pages 1, 7, 8, 9, 10, 15, 34, 59, 93, 99, 101, 104, 106, 107, 117, 198, 229, 231, 239.

Alleged to have deceived and cheated his partner in the trade of September 6th, 1886. Pages 3, 4, 11, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, 34, 39, 40, 46–7–8, 52, 53, 54, 55, 60, 94–5–6–7, 100–2, 103, 119, 120, 122, 123, 125, 126, 128, 133, 134, 145, 197, 198, 199, 200–14.

BALTIC STEAMSHIP CASE and others. Pages 42, 66, 67, 110, 146–7, 150, 151, 154.

BRISTOW, SECRETARY, and others, statement concerning. Pages 36, 69, 70, 107, 108, 196.

CUMMINGS accuses Baker of keeping papers and information in inspector cases under lock and key and from him. Pages 2, 11, 12, 14, 15, 20, 22, 37, 38, 39, 40, 41, 44, 45, 46, 47, 48, 52, 55, 56, 93, *99*, 100, 101, 103, 108, 109, 111, 197, 198, 199.

His confidence in Baker. Pages 3, 19, 21, 23, 27, 28, 47, 48, 143.

His knowledge of inspector cases. Pages 2, 3, 11, 12, 13, 15, 19, 20, *23*, 37, 38, 39, 40, 41, 42, 47, *48*, 57, 58, 62, 63, 64, 92, 94, 100, 101, 102, 103, 104, 111, 119, 120–3, 128, 139, 140, 145, 154, 197, 228, 249, 250, 258.

Compensation for services in the inspector cases, after the sale September 6th, 1886, claimed by him. Pages 56, 57, 61, 67, 68, *83*, *84*, 98, 104, 109, 110, *164*, 199, 200, 230.

Collections made by him for Baker. Pages 22, 23, 55, 64, 95, 110.

His neglect of duty. Pages 2, 8, 9, 10, 11, 21, 29, 30, 32, 37, 38, 41, 43, 46, 47, 48, 87, 88, 91, 93, 114, 148, 240.

Satisfied as to fees of 1886. Pages 14, 22, 23, 24, 25, 26, 27, *34*, 55, 62, 63, 133, 141, 143, 154.

Papers and documents as to inspector cases received by him. Pages 3, 11, 13, 14, 15, 21, 22, 23, 24, 40, 41, 44, 45, 46, 47, 93, 103, 111, 118, 119, 126, 154, 197.

Contradictory testimony of. Pages (1, 19, 69, 80) (46 and 59) (46 and 47) (23–132–140) (pages 30–43) (31, 164) (29, 43) (27–144–152) (29–43–131–135–139–149) (*24*, 26, 54, 55, *153*) (22, 23, and 160 his witness) (2, 27, 65, 69, 79) (1–29–30–66, 135–150) (23–26–55–132–133–140–141) (1–29–30–43–138) (20–56–57–58).

His statements as to when he knew he had been deceived, cheated, or defrauded. Pages 5, 23, 24, 25, 26, 27, 34, 54, 55, 60, 61, 62, 63, 132, 133, 141, 142, 143, 152, 153, 154.

Ratified the sale of September 6th, 1886, three times after he admits he had Exhibit H. M. B. No. 3 in his personal possession. Pages 14, 15, 22, 23, 59, 60, 95, 174.

COMPROMISE, Suggestions of. Pages 26, 61, 62, 110, 145, 200, 227.

COOKE, H. D., & Co., Assignment of. Pages 9, 10, 31, 32, 66, 76, 93, 98, 99, 105, 125, 134, 197, 199, 224, 248, 249, 251, 252, 253, 254, 258, 265, 267, 268, 269.

Assigneeship fees part of compensation for inspector cases. Pages 12, 32, 98, 99, 100, 134, 197, 201, 224, 225, 229, 248, 249, 250, 253, 254, 261, 268, 269.

DISSOLUTION OF PARTNERSHIP (see Baker, his intention to close).

EXECUTIVE DOCUMENTS, Nos. 70 and 225. Pages 11, 13, 14, 22, 27, 45, 47, 94, 100, 118, 120, 123, 124, 126, 127, 132, 149.

EXHIBITS not printed, 204–5–6.

FEES in inspector cases prior to sale. Pages 2, 12, 20, 100. In 1886 (see Exhibit H. M. B. No. 3, page 174).

Suspended in 1886. Pages 11, 12, 44, 59, 93, 96, 97, 179, 233, 234, 235, 263.

After 1886. See Auditor's account and Exhibit H. M. B. No. 1. Pages 259, 226.

One-third of to Cummings the basis of the sale. Pages 10, 12, *21*, *22*, 59, 81, 93, *98*, 100, 132, 197, 223, 229.

Other than twenty-five per cent., and in cases outstanding. Pages 11, 44, 59, 93, 96, 97, 233, 235, 181, 182, 264.

FRENCH AND AMERICAN CLAIMS COMMISSION. Pages 88, 154.

HELLEN, MR., Transactions with. Pages 35, 36, 66, 107.

HEUSTIS CASE, The. Pages 33, 34, 65, 105.

INSPECTOR CASES, Nature of. Pages 2, 19, 20, 91, 103.

Sold to Baker September 6th, 1886. Pages 4, 12, 22, 60, 83, 98, 121, 213, 214.

Pending. Pages 11, 21, 44, 45, *46*, 59, 93.

How prosecuted. Pages 2, 19, 20, 21, 91.

Amount of paid before sale. Pages 2, 12, 100.

Allowed and paid in 1886. Pages 4, 14, 15, 22, 23, 24, 25, 127, 174, 226, 259.

Allowed and paid after 1886. Pages 24, 25, 26, 34, 226, 235, 259.

Total amount paid. Pages 226, 259.

Suspended at time of sale. Pages 11, 44, 59, 93, 96, 97, *179*, 232, 233, 234, 235, *263*.

Secured after sale value of. Pages 11, 44, 59, *182*, 233, 235, *264*.

Sale of under consideration a long time. Pages 3, 11, 20, 21, 40, 80, 81.

LIGHT HOUSE DISBURSEMENT CASES. Page 90.

LITTLE ROCK OR BEEBE CASE. Pages 30, 43, 89, 113, 114, 115, 131, 137, 138.

LIMITATION, Statute of. Pages 5, 17, 23, *24*, 25, *26*, 27, 34, 54, *55*, 60, 61, 62, 63, 101, 104, 133, 141, *142*, *143*, 144, 146, 153, 154, 214, 215, 216, 217.

TREASURY DRAFTS. Pages 56, 57, 59, 61, 67, 68, 83, 84, 98, 104, 109, 110.

"THOUGHTS IN MIND"—Exhibit H. M. B. No. 2. Pages 7, 9, 15, 23, 25, 48, 49, 50, 51, 52, 53, 54, 69, 70, *79*, 101, 102, *109*, 112, 140, *141*, 195, 198.

The necessarily limited time allowed for discussion does not admit of an oral reference to more than a very small part of the testimony, which, so far as is material, is in the papers and documents and in the examinations of Cummings and Baker.

The character and honor of Mr. Baker have been by this suit assailed for the first time; and, so, we are justified in asking—as we are sure we shall receive—the careful consideration of this court of the history of the case and the testimony that bears upon it, notwithstanding that the learned court below reached the conclusion that Cummings was entitled to treat the partnership as continuing to exist in respect of the inspector cases.

We submit that the decree should be reversed, and the case remitted with directions to dismiss the bill, with costs.

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S. R. BOND,
Of Counsel for Appellant.